

Janine L. Migden-Ostrander
(Reg. No. 0002310)
Consumers' Counsel
Joseph P. Serio (Reg. No. 0036959)
(Counsel of Record)
E-mail: serio@occ.state.oh.us
Larry S. Sauer (Reg. No. 0039223)
E-mail: sauer@occ.state.oh.us
Gregory J. Poulos (Reg. No. 0070532)
E-mail: poulos@occ.state.oh.us
Assistant Consumer's Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-8574
Facsimile: 614-466-9475

COUNSEL FOR APPELLANT, OFFICE OF THE
OHIO CONSUMERS' COUNSEL

Facsimile: 614-461-4198

COUNSEL FOR INTERVENING APPELLEE,
THE EAST OHIO GAS COMPANY D/B/A
DOMINION EAST OHIO

Richard Cordray (Reg. No. 0038034)
Attorney General of Ohio
Duane W. Luckey (Reg. No. 0023557)
Stephen A. Reilly (Reg. No. 0019267)
Anne L. Hammerstein (Reg. No. 0022867)
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793
Telephone: 614-466-4397
Fax: 614-466-8764

COUNSEL FOR APPELLEE, THE PUBLIC
UTILITIES COMMISSION OF OHIO

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	5
A. This Appeal Deals With A Fraction Of A Customer’s Total Gas Bill.....	5
B. The Undisputed Need For A “Decoupled” Rate	6
C. A Well-Developed Record Demonstrates The Propriety Of The SFV Rate Design.....	8
III. STANDARD OF REVIEW.....	12
IV. ARGUMENT.....	13

Proposition of Law No. 1: A utility properly provides notice under Ohio law if (a) its notices under R.C. 4909.18 and R.C. 4909.43 accurately describe the substance of its application and (b) subsequent notices accurately describe the substance of the issues subject to hearing before the Commission.

A. The Notices Issued In This Case Complied With All Applicable Statutes	14
B. DEO Was Not Required To Anticipate An Issue That Was Not Raised In Its Application	16

Proposition of Law No. 2: Because cost causation principles are a “basic underlying consideration” in setting utility rates, City of Columbus v. Pub. Util. Comm’n (1992), 62 Ohio St. 3d 430, 438, an SFV rate design is proper when it better aligns a utility’s rates with the utility’s costs to provide service and when the total increases in bills are relatively small.

A. Cost Causation Is A Long Recognized And Important Principle In Rate Design.....	20
B. The SFV Rate Design Approved In This Case Properly Reflects Cost Causation Principles	21
C. The SFV Rate Design Did Not Reflect a Change in Principles	23
D. The Approved Rates Reflect Gradualism.....	24

Proposition of Law No. 3: Although conservation is but one of many factors that the Commission must consider in imposing a rate design under Revised Code Sections 4929.02 and 4905.70, SFV rates promote conservation because they: (1) send appropriate price signals; (2) minimally affect the total bill on which conservation decisions are made; and (3) align the Company’s interests with its customers to encourage conservation

A.	Whether The Rate Design Promotes Conservation Is One Of Many Factors To Be Reviewed In Determining The Propriety Of A Rate Design	28
B.	SFV Rates Promote Conservation	30

Proposition of Law No. 4: The Court will not substitute its judgment for that of the Commission on a factual issue where, as here, Appellants have not shown that the Commission’s orders are against the manifest weight of the evidence.

A.	The Commission Properly Considered The Effect Of SFV Rates On All Customers	35
1.	DEO’s high-use customers subsidize its low-use customers.....	36
2.	Low-income customers are, on average, better off under SFV rates than under a “traditional” rate design	40
B.	The Commission’s Decision to Adopt SFV Rates Was Procedurally Proper and Well Considered.....	43
C.	The Commission’s DSM Directives Have No Bearing On Its SFV Findings	45
V.	CONCLUSION	46

APPENDIX TABLE OF CONTENTS

R.C. 4905.04.....	1
R.C. 4909.13.....	2
R.C. 4909.27.....	3
R.C. 4909.151.....	4
<i>In re Application of Dominion East Ohio for an Increase in Rates for Gas Distribution Service, PUCO Nos. 07-829-GA-AIR, et al., Entry (Oct. 24, 2007).....</i>	<i>5</i>

TABLE OF AUTHORITIES

	Page
STATE CASES	
<i>AT&T Commc'ns of Ohio, Inc. v. Pub. Util. Comm'n</i> (1990), 51 Ohio St. 3d 150.....	2, 13, 17-18
<i>Buckeye Lake Chamber of Commerce v. Pub. Util. Comm'n</i> (1954), 161 Ohio St. 306.....	21
<i>City of Columbus v. Pub. Util. Comm'n</i> (1992), 62 Ohio St. 3d 430	3, 20-21
<i>City of Parma v. Pub. Util. Comm'n</i> (1999), 86 Ohio St. 3d 144	14
<i>Cleveland Elec. Illuminating Co. v. Pub. Util. Comm'n</i> (1977), 42 Ohio St. 2d 403	25
<i>Comm. Against MRT v. Pub. Util. Comm'n</i> (1977), 52 Ohio St. 2d 231	17
<i>Elyria Foundry Co. v. Pub. Util. Comm'n</i> (2007), 114 Ohio St. 3d 305.....	36
<i>General Motors Corp. v. Pub. Util. Comm'n</i> (1976), 47 Ohio St. 2d 58	34
<i>Green Cove Resort I Owners' Association v. Pub. Util. Comm'n</i> (2004), 103 Ohio St. 3d 125	21
<i>Myers v. Pub. Util. Comm'n</i> (1992), 64 Ohio St. 3d 299	21
<i>Ohio Consumers' Counsel v. Pub. Util. Comm'n</i> (2009), 121 Ohio St. 3d 362.....	12
<i>Ohio Consumers' Counsel v. Pub. Util. Comm'n</i> (1984), 10 Ohio St. 3d 49.....	24
<i>Ohio Partners for Affordable Energy v. Pub. Util. Comm'n</i> (2007), 115 Ohio St. 3d 208.....	29
<i>Payphone Ass'n of Ohio v. Pub. Util. Comm'n</i> (2006), 109 Ohio St. 3d 453	13
<i>Townships of Mahoning County v. Pub. Util. Comm'n</i> (1979), 58 Ohio St. 2d 40.....	3, 21
STATUTES	
R.C. § 4903.083	15-17
R.C. § 4905.04	35
R.C. § 4905.70	3, 28
R.C. § 4909.13	35
R.C. § 4909.151	21

R.C. § 4909.18.....	13-16
R.C. § 4909.19.....	13-18
R.C. § 4909.27.....	35
R.C. § 4909.43.....	13-14
R.C. § 4929.02.....	3, 28

PUBLIC UTILITIES COMMISSION OF OHIO OPINIONS

<i>In re Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Service to All Jurisdictional Customers, PUCO No. 95-656-GA-AIR, Opinion and Order (Dec. 12, 1996).....</i>	<i>27</i>
<i>In re Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service, PUCO Nos. 88-716-GA-AIR, et al., Opinion and Order (Oct. 17, 1989).....</i>	<i>27</i>
<i>In re Application of The East Ohio Gas Co. and the River Gas Co. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service, PUCO No. 93-2006-GA-AIR, Opinion and Order (Nov. 3, 1994).</i>	<i>6</i>
<i>In re Application of The East Ohio Gas Co. d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Serv., PUCO Nos. 07-829-GA-AIR, et al. Opinion and Order (Oct. 15, 2008).....</i>	<i>passim</i>
<i>In re Application of The East Ohio Gas Co. d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Serv., PUCO Nos. 07-829-GA-AIR, et al. Entry (June 27, 2008)</i>	<i>15</i>
<i>In re Investigation into Long Term Solutions Concerning Disconnection of Gas and Elec. Serv. in Winter Emergencies, PUCO No. 08-951-GE-UNC, Entry (Sept. 10, 2008)</i>	<i>42</i>
<i>In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Authority to Increase Rates for Distribution Service, PUCO Nos. 07-551-EL-AIR, et al., Opinion and Order (Jan. 21, 2009)</i>	<i>21</i>
<i>In re Eastern Natural Gas Co. & In re Pike Natural Gas Co., PUCO Nos. 08-940-GA-ALT, 08-940-GA-ALT, Entry (Nov. 5, 2008)</i>	<i>19</i>
<i>In re Review of SBC's Ohio TELRIC Costs for Unbundled Network Elements, PUCO No. 02-1280-TP-UNC, Opinion and Order (Nov. 3, 2004).....</i>	<i>21</i>

I. INTRODUCTION

In this case, the Public Utilities Commission of Ohio (“Commission”) determined that a so-called straight-fixed variable (“SFV”) rate design is the best mechanism for The East Ohio Gas Company, doing business as Dominion East Ohio (“DEO”), to collect charges from a certain class of customers for natural gas distribution service.¹ The Commission made this decision after reviewing over 570 pages of written testimony, hearing from thirteen expert witnesses and receiving input from 186 lay witnesses during ten days of public hearings across the state. The evidence showed that, within this customer class, DEO’s distribution costs are overwhelmingly *fixed*, *i.e.*, they do not vary depending on how much natural gas a particular customer in that service class uses. The Commission thus determined that the distribution service charges should also be largely fixed. Accordingly, the Commission elected to replace DEO’s largely volumetric distribution charges (*i.e.*, charges based on the volume of gas used, measured in thousand cubic feet (“Mcf”)) with a rate structure consisting of a relatively larger fixed charge and a relatively smaller volumetric charge.

Based on its careful review of the record evidence and balancing the interests of all concerned, the Commission concluded that moving to such a rate structure, phased in over two years, would provide a host of benefits. In particular, in its lengthy written opinion, the Commission detailed how this rate design would: (1) better reflect how DEO incurs its costs and thus better adhere to cost causation principles (Op. and Order, PUCO Nos. 07-829-GA-AIR, *et al.*, dated Oct. 15, 2008 (“Op. and Order”), p. 24 (OCC App., p. 46)); (2) make DEO’s revenue and earnings more stable (*id.* at 22 (OCC App., p. 44)); (3) provide more stable customer bills

¹ This class is known as the General Sales Service / Energy Choice Transportation Service (“GSS/ECTS”) class.

(*id.* at 24 (OCC App., p. 46)); (4) be more transparent and easier for customers to understand (*id.*); (5) send more accurate price signals to customers (*id.*); (6) remove disincentives for DEO to promote energy efficiency (*id.* at 22 (OCC App., p. 44)); and (7) reduce inter-customer class subsidies (*id.* at 25 (OCC App., p. 47)).

Unhappy with the Commission's ruling, Appellants here collectively mount five challenges to it. In pressing these arguments, however, Appellants' arguments ask the Court to consider only part of the story. Appellants ignore relevant cases. They focus on narrow slices of the record, while neglecting other evidence. Indeed, their substantive challenges to the rate design at issue focus on one specific charge related to only one small portion of a customer's gas bill, and they ignore the effects of the approved rate design on the customer's entire gas bill. In short, none of their arguments can withstand careful scrutiny.

For example, the Office of the Ohio Consumers' Counsel ("OCC") asserts that the notice DEO filed with its original application for a rate increase was invalid for failing to disclose the SFV rate structure. But, it is undisputed that DEO did not seek an SFV rate structure in its application. Rather, the Staff first introduced an SFV proposal *eight months after DEO's initial application*. And OCC fails to mention that after the Staff made its SFV rate proposal, the Commission's public hearing notice expressly disclosed that SFV rates would be a major item considered at the public hearings. OCC fails to point to any language in the notice statutes that require DEO to be clairvoyant. OCC further fails to mention that this Court has already held that when issues are raised subsequently to a utility's application, those issues need not be part of the notices relating to the application. See *AT&T Commc'ns of Ohio, Inc. v. Pub. Util. Comm'n* (1990), 51 Ohio St. 3d 150.

Appellants' claim that the order violates Commission precedent by failing to respect the principle of gradualism – *i.e.*, that increases in rates should be “gradual” – similarly fails to present the full picture. Appellants overlook that there are many other factors that the Commission must consider in designing rates, including cost causation, which this Court has termed “the basic underlying consideration” in ratemaking.² Here, the evidence showed, and the Commission found, that distribution fixed costs do not vary between customers based on usage to any real degree. Thus, SFV rates, which use a larger fixed component and a smaller volumetric charge, better match the way in which DEO's service costs are actually incurred. Accordingly, the use of such rates here is fully consistent with the Commission's ongoing commitment to cost causation.

Indeed, even to make their case that the rate changes are not “gradual,” Appellants again point mainly to one charge, ignoring the effect of the Commission's rate design on the customer's total bill. When considering the total bill, the change experienced by most customers is minimal, and low-income customers on average benefit. Further, the Commission approved a two-year phase in of the SFV rates to ensure that the impact on customers would indeed be gradual.

Similarly, Appellants argue that the Commission's order is unlawful because it purportedly does not promote conservation, allegedly in violation of Sections 4929.02 and 4905.70 of the Revised Code. But Ohio law makes conservation one of many public policy objectives that the Commission must balance in fashioning rates. Moreover, the approved SFV rate design fully supports conservation objectives. No one disputes that DEO's customers will continue to see a reduction in their total natural gas bills for any reduction in usage. Further,

² *City of Columbus v. Pub. Util. Comm'n* (1992), 62 Ohio St. 3d 430, 438 (quoting *Townships of Mahoning County v. Pub. Util. Comm'n* (1979), 58 Ohio St. 2d 40, 44).

Appellants overlook the negative consequences for conservation created by the alternative rate structure that they favor. That rate design (called a Sales Reconciliation Rider) would not provide clear information about how much a customer could save by conserving – and, in fact, in some cases would not provide any savings at all for those customers who conserve. Appellants also never address that the approved SFV rate design reduces the disincentives for DEO to encourage conservation among its customers. It is undisputed that if DEO’s distribution cost recovery rests heavily on volumetric charges, DEO’s financial incentives necessarily run toward promoting consumption, not conservation. SFV rates reduce the volume-dependent nature of the cost recovery, freeing DEO to partner more fully with customers in demand side management (“DSM”) efforts designed to reduce consumption.

Appellants’ claim that the Commission’s findings are contrary to the manifest weight of the evidence borders on spurious. As noted, the evidence here included over 500 pages of written testimony, six days of hearings, ten separate public meetings across the state, and substantial correspondence from DEO’s customers and others, all of which was directed almost exclusively at rate design issues. Every one of the Commission’s factual determinations rests directly on that evidence. Appellants completely failed to show otherwise.

The General Assembly has entrusted the Commission with the responsibility to regulate utility rates for the benefit of all Ohio’s citizens. After careful consideration of the substantial record here, the Commission determined that a change in rate design would best serve rate-design objectives. Through their repeated failure to deal forthrightly with the relevant law and evidence of record, Appellants have fallen far short of demonstrating any basis for overturning the Commission’s determination. Accordingly, DEO respectfully requests that the Court reject Appellants’ challenges and affirm the Commission’s order.

II. STATEMENT OF FACTS

A. This Appeal Deals With A Fraction Of A Customer's Total Gas Bill.

A customer's natural gas bill is made up of three parts: (1) the cost of the gas commodity; (2) the cost of the distribution service; and (3) other costs.³ Distribution service involves all of the equipment and services to deliver the gas to the customer and to recover the costs for those things.⁴ This case is exclusively about distribution service. There is no dispute that, on average, the total charge for distribution service in this case is approximately twenty percent of a customer's total gas bill.⁵

Unlike a "typical" appeal following a utility rate case, there is no dispute that DEO is entitled to an increase in its distribution rates or about how much that increase should be. Both of these issues were resolved via a stipulation that was approved by the Commission. (*See* Stipulation and Recommendation, dated Aug. 22, 2008 ("Stip."), p. 3 (OCC Supp., p. 3).) This case solely relates to the design of the rates that would allow DEO an opportunity to collect the revenue that all agree it is entitled to receive.

For almost thirty years, DEO's distribution rates have had two parts. The rates included a customer service charge that was fixed, *i.e.*, it was assessed on a per customer basis regardless of

³ These other costs include gross receipts and excise taxes, an automated meter-reading cost recovery rider and other volume-based riders, including uncollectible expense riders, which are designed to recover the costs associated with uncollectible accounts, a "transportation migration rider," associated with the cost of operational balancing, and a demand-side management rider. (*See* DEO Ex. 2.0, p. 7 (Friscic Direct) (DEO Supp., p. 18); DEO Ex. 1.0, pp. 12, 29 (Murphy Direct) (DEO Supp., p. 13, 14).)

⁴ Thus, distribution service includes everything from the installation of pipes and meters to the collection of bills for service. (*See* DEO Ex. 6.0, p. 7 (Andrews Direct), Attach. CA-6.1, p. 5 (cost-of-service study) (DEO Supp., pp. 21, 23).)

⁵ Approximately 75 to 80 percent of the total bill is commodity cost, and the remaining 20 to 25 percent consists of both the distribution cost and riders. (Tr. IV, p. 87 (Murphy Re-Direct) (OCC Supp., p. 73).)

the amount of gas used by the customer. Rates also included a volumetric (per Mcf) charge. In this case, Appellants challenge the level of the former.

B. The Undisputed Need For A “Decoupled” Rate

There is no dispute that the overwhelming majority of DEO’s costs to provide distribution service are fixed. The cost of pipes, meters, the installation of that equipment, meter reading and billing (to name a few costs) does not vary with the amount of gas that DEO’s customers consume. (*See* DEO Ex. 1.4, pp. 8, 9-10 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 63, 64-65).)

Prior to this case, DEO had last sought an increase over fifteen years ago. *See In re Application of The East Ohio Gas Co. and the River Gas Co. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service*, PUCO No. 93-2006-GA-AIR (Application filed Jan. 18, 1994). In its last rate case, the Commission established a customer charge of \$5.70. *Id.*, Op. and Order dated Nov. 3, 1994, Ex. A-1, p. 1 (DEO Supp., p. 158).

The unrebutted record evidence showed that this fixed charge now allows DEO to recover only approximately 30 percent of its fixed costs. (Tr. IV, p. 89 (Murphy Re-Cross) (OCC Supp., p. 77).) Thus, DEO had become heavily reliant on its volumetric charge for sufficient revenues to recover its fixed costs.

The unrebutted record also showed that DEO’s customers’ gas usage had declined substantially. From 1990 to 2007, gas usage per residential customer had declined by 24 percent. (DEO Ex. 1.4, p. 13 (DEO Supp., p. 68); Staff Ex. 1 (“Staff Rep.”), p. 45 (DEO Supp., p. 31); Oral Argument Tr., p. 12, Ex. 1, p. 2 (DEO Supp., pp. 123, 136).) Further, the Company had projected that the downward trend in customer use would continue at a rate of one to two percent each year into the foreseeable future. (DEO Ex. 1.4, p. 13 (DEO Supp., p. 68).) Given the Company’s heavy reliance on volumetric rates to recover the bulk of its costs, the substantial

reduction in customer usage further seriously threatened the Company's ability to recover its costs. (*Id.* at 12-13.)

To address this issue, the Company in its Application proposed to "decouple" its revenue needs from customer usage. (*See In re Application of The East Ohio Gas Co. d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Serv.*, PUCO Nos. 07-829-GA-AIR, *et al.*, ("Application") Alt. Reg. Ex. A (Aug. 30, 2007) (DEO Supp., pp. 6-7) (describing Sales Reconciliation Rider); DEO Ex. 1.0, pp. 34, 40 (Murphy Dir.) (DEO Supp., pp. 15, 16).) Specifically, DEO proposed a Sales Reconciliation Rider ("SRR") that, on an annual basis, would compare the actual weather-normalized revenues collected with the Company's weather-normalized authorized revenue requirement adjusted for changes in the number of customers, and adjust rates accordingly to account for any over-collection or under-collection.

Over eight months after the application was filed, the Commission's Staff issued its Staff Report on its investigation into DEO's Application. In that report, the Staff recognized the need for some type of "decoupled" rate. The Staff rejected DEO's proposed SRR and proposed instead a rate design that would attempt to capture recovery of fixed costs largely through a fixed charge. The Staff's proposed SFV rate design thus called for an increase in the customer service charge. The Staff's proposal also called for *a decrease in the volumetric portion* of the distribution rate. (Staff Rep., p. 35 (DEO Supp, p. 28).)

Notably, no party challenged the need for a decoupled rate. The Stipulation which was signed by both Appellants (and by Amicus Curiae Cleveland) reserved one issue to be litigated:

The Signatory Parties expressly agree that the rate design issue characterized as fixed vs. volumetric and/or *a sales decoupling rider vs. straight fixed variable* is not resolved through this partial Stipulation and will be submitted to the Commission for a decision after finally litigating the issue through an evidentiary hearing. [Stip., p. 2, n. 1 (OCC Supp., p. 2) (emphasis added).]

Indeed, OCC's witness Frank Radigan (approvingly cited by Appellant Ohio Partners for Affordable Energy ("OPAE") and Amicus City of Cleveland) endorsed a decoupling mechanism in his testimony. (OCC Ex. 21, pp. 8-9, 18 (Radigan Direct Testimony) (OCC Supp., pp. 169-70, 179).)

C. A Well-Developed Record Demonstrates The Propriety Of The SFV Rate Design.

The sole issue litigated at the hearings before the Commission was the rate design issue as described in the Stipulation. In ultimately fashioning its order, the Commission considered 570 pages of written testimony and briefs, along with large amounts of written correspondence from customers. Among other things, this evidence included information on the impact that an SFV rate structure would have on DEO's collections for distribution charges, on conservation efforts, on DEO's long-term viability, on low-income customers, and on other customers served by DEO. (*See* Op. and Order, pp. 13-21 (OCC App., pp. 35-43).)

After careful consideration of this voluminous record, the Commission issued an order on October 15, 2008, implementing a "modified" SFV rate structure over a two-year period.⁶ Under Year One rates, DEO will charge those in the GSS/ECTS class as follows:

⁶ Under this rate design, DEO will recover approximately 71 percent of its fixed costs through the fixed fees in Year One, and 84 percent of its fixed costs through the fixed fee in Year Two. (DEO Ex. 1.4, p. 8 (Murphy Fourth Supplemental Direct) (DEO Supp., p. 63).) Because Year One and Year Two do not allow DEO to recover all of the fixed portion of its distribution costs through fixed charges, those rates are properly viewed as "modified" SFV. For ease of discussion, however, this rate design is referred to as "SFV."

	Year One	Year Two
Customer Charge	\$12.50	\$15.40
Volumetric charge		
0-50 Mcf/mo.	\$0.6250/Mcf	\$0.3550/Mcf
50+ Mcf/mo.	\$1.0510/Mcf	\$0.6030/Mcf

(Staff Ex. 3B at Ex. SEP-3 (Puican Second Supplemental Testimony) (DEO Supp., p. 76).)⁷

By more directly aligning the fixed structure of DEO's fees with the fixed nature of DEO's costs, the SFV design adopted here positively addressed a number of issues. First, as noted, by reducing DEO's reliance on volumetric rates to recover fixed costs, the rate design put DEO less at risk to under-recover its costs through a reduction in customer usage. (*See* DEO Ex. 1.4, pp. 12-13 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 67-68) (describing how usage declines among residential customers "exert tremendous influence on the Company's ability to recover its revenue requirement from that class").) This, in turn, has two benefits. It makes the prospect that the Company could recover its costs less susceptible to the vagaries of weather (e.g., warmer weather can lead to reduced consumption and thus under recovery of fixed costs). It also reduces a disincentive to DEO to encourage conservation – a disincentive no one disputed existed under the prior rate structure. Thus, for example, if the Company would be unable to recover its costs but for a certain level of consumption, DEO could not be expected to encourage consumption to go below that level. (*See id.* at 9 (noting reduction in "adverse revenue impact" aligns Company's and customers' conservation interests).)

⁷ Pursuant to the Commission's Entry on Rehearing, which re-instituted the stipulated rate of return, these volumetric rates were modified as follows: Year One – \$0.648 / Mcf for the first 50 Mcf/mo.; \$1.075 / Mcf for 50+ Mcf/mo.; Year Two – \$0.378 / Mcf for the first 50 Mcf/mo.; \$0.627 / Mcf for 50+ Mcf/mo. (*See* Entry on Reh'g, p. 5 (OCC App., p. 10); Tariffs filed Dec. 22, 2008, GSS and ECTS schs. (DEO Supp., pp. 146, 149).)

While the SFV rate design improved DEO's incentive to participate in conservation efforts, the rate design maintained customers' incentives to conserve. As OCC's witness Radigan admitted, the total bill is "the biggest driver" of conservation decisions. (Tr. V., pp. 22-23 (Radigan Cross) (DEO Supp., pp. 93-96).) Because gas commodity costs constitute the overwhelming large part of a customer's total gas bill (for an average customer, *between seventy-five and eighty percent*⁸) if a customer uses less gas, the customer pays a lower gas bill.⁹ (Tr. IV, p. 87 (Murphy Re-Direct) (OCC Supp., p. 73).)

Another benefit derived from the SFV rate design approved here is that it addressed subsidies paid by some customers. The un rebutted record demonstrated that under DEO's previous rates, non-residential higher-use customers in DEO's GSS/ECTS class subsidized relatively lower-use residential customers in that class. (Tr. IV, p. 22 (Murphy Cross) (DEO Supp., pp. 78-79).) Under the approved rate design, that subsidy was reduced, but not eliminated. (See Tr. I, p. 235 (Andrews Re-Direct) (OCC Supp., p. 82C).) Thus, all customers in the GSS/ECTS class will pay an amount more accurately reflecting their fair share.

Moreover, low-income customers will fare, on average, better than they would have under a so-called "traditional" rate design. (See Tr. IV, p. 29 (Murphy Cross) (DEO Supp., pp. 80-81) ("We do note, of course, that as you're looking at a PIPP customer, their costs will actually decrease based upon [Staff Ex. SEP-1A].") Low-income customers tend to use more natural gas than the average residential customer. In the test year, those low-income customers

⁸ Of the total bill, approximately 75 to 80 percent consists of the commodity charge, with the remaining 20 to 25 percent including both distribution charges, riders and other components. (Tr. IV, p. 87 (Murphy Re-Direct) (OCC Supp., p. 73).)

⁹ OPAE's brief provides proof of this truism. Using OPAE's numbers, for Year One rates, a customer using 60 Mcf pays a total \$280.42; a customer using 100 Mcf pays a total of \$362.72; and a customer using 250 Mcf pays a total of \$722.80. (See OPAE Br., p. 10; Staff Ex. 3B, Exs. SEP-1A and SEP-1B (Puican Second Supplemental Direct) (DEO Supp., pp. 72-73).)

who are included in the percentage-of-income payment plan (“PIPP”)¹⁰ used on average 130 Mcf per year; residential customers used on average 99.1 Mcf per year. (OCC Post-Hearing Br., p. 10 (DEO Supp., p. 117); DEO Ex. 1.5, p. 3 (Murphy Surrebuttal) (DEO Supp, p. 115); *see* Staff Ex. 3, pp. 6-7 (Puican Direct) (OCC Supp., pp. 278-79).) Because the average PIPP customer’s usage was greater than the average residential customer’s usage, those PIPP customers using more than the residential average would benefit (*i.e.*, pay less) with a bill calculated under an SFV rate design. (DEO Ex. 1.5, p. 3 (DEO Supp., p. 115).)

Other low income customers would also benefit. DEO identified customers who were not under PIPP but who had household incomes at or below 175 percent of the federal poverty level.¹¹ The un rebutted evidence showed that, like PIPP customers, this group of customers also used more gas on average than the average DEO residential customer and thus would likely similarly benefit under SFV rates. (*Id.* at 2-3.)

In addition to implementing the SFV rates, the Order also imposed certain other obligations on DEO. In particular, DEO had previously stipulated that it would spend \$9.5 million annually on new demand side management (“DSM”) programs, and that it would evaluate the feasibility of separating its residential and non-residential service classes. Accordingly, the Order required DEO to spend \$9.5 million on DSM programs, and required DEO to file an updated cost of service study (which it filed on January 13, 2009) detailing the

¹⁰ Under the PIPP program, low-income customers at or below 150 percent of the poverty level pay 10 percent of their monthly household income for gas, no matter how much gas they use. (*See* <http://www.puco.ohio.gov/PUCO/Consumer/Information.cfm>.) Bad debts arising from arrearages remaining on PIPP customer accounts are recovered through a rider charge applicable to nearly all of DEO’s customer classes.

¹¹ The Home Energy Assistance Plan (“HEAP”) is a federally-funded program administered by the Ohio Department of Development that provides home heating funds for applicants at or below 175 percent of the federal poverty line. (*See* <http://www.development.ohio.gov/cdd/ocs/regheap.htm>.)

cost of serving each of its various customer rate classes. The Order further required DEO to implement a low-income pilot program providing a \$4.00 bill credit against the fixed charge for up to 5,000 low-income customers. (Op. and Order, pp. 26-27 (OCC App., pp. 48-49).)

Appellants now challenge that Order. But, faced with a rate design that more appropriately recovers DEO's costs, reduces subsidies, promotes conservation and benefits low-income customers, Appellants' arguments go begging. As demonstrated below, Appellants would have the Court ignore apposite statutory language and case law and focus on selected excerpts of the record to the exclusion of other evidence.

III. STANDARD OF REVIEW

OCC's statement of the standard of review, like many of its arguments, starts from a faulty premise and ends at a faulty conclusion. OCC contends that the standard of review is *de novo*, because it is asking the Court to decide matters of law. (OCC Br., p. 2.) Its substantive challenges to the rate at issue here, however, reveal that OCC is principally attacking the Commission's chosen rate design for allegedly failing to comply with OCC's version of statutorily-specified "public policies." (*See, e.g.*, OCC Br., p. 20 (contending that SFV rates do not "promote energy efficiency and encourage conservation in accordance with Ohio law and policy").) On such arguments, appellants bear the burden of proof in this Court, and it is a heavy one. Appellants must show that the Commission order is against the manifest weight of the evidence, *i.e.*, that the Commission's findings are "so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty." *Ohio Consumers' Counsel v. Pub. Util. Comm'n* (2009), 121 Ohio St. 3d 362, 365. Raising that burden even further, this Court has noted that the Commission is the "agency with the expertise and statutory mandate to implement the statute" and that, in the absence of a statute expressly "prescribing a particular formula" for a

given rate, the PUCO is “vested with broad discretion.” *Payphone Ass’n of Ohio v. Pub. Util. Comm’n* (2006), 109 Ohio St. 3d 453, 459.

Moreover, on questions of *rate design*, like those here, this Court is particularly deferential to Commission determinations. Such issues lie at the heart of the Commission’s statutorily assigned role. In the Court’s words:

The commission is to follow the often difficult and complex statutory plan and fix lawful and reasonable rates based upon the evidence presented. Under R.C. 4903.13, we are to affirm the commission’s order if it is reasonable and lawful.

Our function is not to weigh the evidence or to choose between alternative, fairly debatable rate structures. That would be to interfere with the jurisdiction and competence of the commission and to assume powers which this court is not suited to exercise. . . . The members of this court are neither accountants nor engineers, and manifestly it would be unfair to litigants and to the commission for the court to pretend that it is in a position to better evaluate the evidence and determine the difficult question of the reasonableness of the order than is the commission. Our task is not to set rates; it is only to assure that the rates are not unlawful or unreasonable, and that the rate-making process itself is lawfully carried out.

AT&T Commc’ns of Ohio, Inc. v. Pub. Util. Comm’n of Ohio (1990), 51 Ohio St. 3d 150, 154 (internal citations and quotations omitted). As described more fully below, the Commission here lawfully carried out the rate-making process. Appellants cannot meet their heavy burden of showing that the Commission’s order is unreasonable or unlawful.

IV. ARGUMENT

Proposition of Law No. 1

A utility properly provides notice under Ohio law if (a) its notices under R.C. 4909.18, 4909.19 and R.C. 4909.43 accurately describe the substance of its application and (b) subsequent notices accurately describe the substance of the issues subject to hearing before the Commission.

OCC argues that DEO's notices were deficient.¹² As demonstrated below, DEO complied with all applicable notice requirements; OCC's arguments are wrong.

A. The Notices Issued In This Case Complied With All Applicable Statutes.

Sections 4909.18, 4909.19 and 4909.43 of the Revised Code require DEO to provide notice about the substance of its application. They do not require DEO to speculate about amendments to its application that the Commission may make sometime during the course of the proceeding.

Section 4909.43 requires DEO to send a notice at least thirty days prior to filing its application for a rate increase to the "mayor and legislative authority of each municipality included in such application" DEO sent that notice on July 20, 2007, some forty days before filing its application for a rate increase on August 30, 2007. (*See* Notice of Intent to File an Application to Increase Rates for Gas Distribution Service, Tab 2 (DEO Supp., p. 4).)

The other two statutes, Sections 4909.18 and 4909.19, require DEO to "publish the substance and prayer of such application . . . for three consecutive weeks in a newspaper

¹² Because OCC failed to raise its notice argument prior to the close of the hearing, OCC waived this point for appeal. In *City of Parma v. Pub. Util. Comm'n.* (1999), 86 Ohio St. 3d 144, 148-49, this Court rejected an attempt by OCC to argue that the notice provided to the public in that case was deficient. The Court reasoned:

No party made any objection to the scheduling of the hearings or to the publication of notice prior to the filing of the application for rehearing after the conclusion of hearings and the commission's issuance of its opinion and order on August 14, 1997. ***By failing to raise an objection until the filing of an application for rehearing, Parma deprived the commission of an opportunity to redress any injury or prejudice that may have occurred. Wherefore, we do not accept Parma's objections to the scheduling or publication of notice of the hearings.***

Id. at 148 (emphasis added). Here, OCC did not raise any argument about notices relating to rate design until its application for rehearing. Thus, applying the reasoning of the *City of Parma* Court, OCC's notice argument here should be rejected as well.

published and in general circulation throughout the territory in which such public utility operates” R.C. 4909.19 (OCC App., p. 72); *see also* R.C. 4909.18 (OCC App., p. 69) (requiring the applicant to include with its application “[a] proposed notice for newspaper publication fully disclosing the substance of the application”).

In compliance with these statutes, DEO provided notice that its rate application included a so-called “decoupling proposal.” The notice further stated, “[R]ecommendations that differ from the application may be made by the Staff or the Commission or by intervening parties and may be adopted by the Commission.” (Proposed Notice for Newspaper Publication at Schedule S-3 (DEO Supp., pp. 8-10); Entry, Case Nos. 07-829-GA-AIR, *et al.*, dated Oct. 24, 2007, p. 3 (DEO App., p. 7) (approving proposed newspaper notice); Proof of Publication, Case Nos. 07-829-GA-AIR, *et al.*, dated July 29, 2008 (DEO Supp., pp. 48-56).) These facts are not in dispute.

There is also no dispute that DEO’s application did not include a proposal for SFV rates. The issue of SFV rates was introduced over eight months after DEO filed its application when the Staff issued its report recommending such rates.

All required notices subsequent to the introduction of SFV rates by the Staff Report mentioned SFV rates. Section 4903.083 requires public notice about the hearing:

[F]or two consecutive weeks in a newspaper of general circulation in the service area. Said notice shall state prominently the total amount of revenue increase and shall list a brief summary of the then known major issues in contention as set forth in the respective parties’ and intervenor’s objections to the staff report filed pursuant to section 4909.19 of the Revised Code.

There is no dispute that such a notice was published. (Commission Entry, dated June 27, 2008, pp. 4-6 (OCC App., pp. 65D–65F).) That notice expressly lists as “major issues”: “(c) *The level*

of the monthly customer charge that customers will pay. (d) Rate design, including consideration of decoupling and straight fixed variable mechanisms.” (Id. (emphasis added).¹³)

In short, DEO, the Staff and the Commission all complied with the plain language of all applicable notice statutes. As a result, the public as well as all parties, interested persons and municipalities in DEO’s service territory, including Appellants here, received actual notice that SFV was an issue in the case and fully participated in the hearings on that issue.

B. DEO Was Not Required To Anticipate An Issue That Was Not Raised In Its Application.

The sole basis for OCC’s notice argument is its claim that DEO was required to disclose a rate design *that DEO did not propose, but that was instead proposed as part of the Staff Report on May 23, 2008, over eight months after DEO issued its statutory notice.* (OCC Br., p. 8.) The notice statutes simply do not require an applicant to be clairvoyant. Rather, they only require the applicant to give notice of the “substance and prayer of [the] application.” R.C. 4909.19 (OCC App., p. 72). Indeed, given that OCC admits that DEO’s application “did not file to implement an SFV rate design” (OCC Br., p. 8), including a disclosure about SFV would have improperly described the application, thereby directly violating the notice statutes. DEO fully complied with its statutory notice obligations. OCC’s claim to the contrary must fail.

Moreover, in pressing its unfounded arguments under Sections 4909.18 and 4909.19, OCC wholly ignores the statutory notice requirements that are actually designed to address the

¹³ The Commission is also required to provide actual notice of the Staff Report by sending that report “*by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as the commission deems interested.*” R.C. 4909.19 (OCC App., p. 72). There is no dispute that the Commission in fact sent the Staff Report, *including Staff’s proposal for an SFV rate design*, to 263 individuals including DEO, municipalities, and other interested parties (including appellants here). (Service Notice at 1-66 (May 23, 2008) (DEO Supp., pp. 33-42).) Thus, in this way too, all of those parties received actual notice of the Staff’s proposed SFV rate design and had an opportunity to file objections.

situation about which it complains. The application notice is merely the first round of notice in a rate case. When additional matter is added later, subsequent rounds of notice – such as those required under Sections 4909.19 and 4903.83 – ensure that all interested parties have full information and the opportunity to respond to the new matter.

OCC's reliance on *Comm. Against MRT v. Pub. Util. Comm'n* (1977), 52 Ohio St. 2d 231, in support of its notice argument is misplaced. (See OCC Br., pp. 8-10.) That case dealt with a very different situation. In *MRT*, Cincinnati Bell Telephone ("CBT") applied for a rate case. CBT's application included a proposal for a new type of rate. *Id.* at 234. CBT failed to describe that proposal in its publication notice. *Id.* CBT failed to properly set forth the substance and prayer of its own application *as of the time the application was filed*. *Id.* Not surprisingly, this Court determined that CBT had failed to comply with Section 4909.19. *Id.*

The situation here is far different from *MRT*. In this case, the Staff added new issues during the ratemaking process long after the application was filed and long after DEO had given its application notice.

In *AT&T Commc'ns of Ohio, Inc. v. Pub. Util. Comm'n* (1990), 51 Ohio St. 3d 150, this Court considered the precise question at issue here and concluded that a notice is not deficient for failing to anticipate issues not raised in the utility's application. In that case, GTE North sought a rate increase, but did not seek to amend one part of its rates, called a carrier common line charge. *Id.* The Staff Report, however, recommended that GTE North increase that charge. *Id.* The Commission ultimately rejected *both* GTE North's proposal *and* the Staff Report recommendation and approved yet another rate mechanism (which also had not been disclosed in the application notice). *Id.* Before this Court, the Commission's order was challenged on the grounds that GTE North's notice was deficient. The appellants there contended that the notice

was deficient because the notice did not discuss a proposed increase to carrier common line charge. *Id.* at 152. This Court rejected the challenge to GTE's notice and held that GTE North's notice fully satisfied requirements of Section 4909.19:

In the instant case, GTE did not propose, in its application, to increase the CCLC; the CCLC increase, consequently, was not within the "substance and prayer" of the application. Thus, R.C. 4909.19 did not require GTE to mention this increase in the notice.

Nevertheless, the notice of application did state that intervening parties may make recommendations different from the proposals in the application and that the commission may even adopt different recommendations. *This language did notify the public that the commission could adjust rates not mentioned in the application.*

* * *

Accordingly, the published notice was adequate, AT&T and MCI actually had notice that the commission could increase the CCLC, and the commission cured any potential defect in the proceedings by affording AT&T and MCI an opportunity to present evidence on revenue distribution.

Id. at 153-154 (emphasis added).

Just as was the case with the notice in *AT&T*, DEO's original notice here provided an accurate description of its application and included a statement that the Commission might deviate from DEO's rate proposal. (Proposed Notice for Newspaper Publication at Schedule S-3, (DEO Supp., pp. 8-10).) No party contends otherwise.

Then, just as in *AT&T*, the Staff Report contained a new rate proposal, not contained in the original application. (Staff Rep., pp. 32-37 (DEO Supp., pp. 25-30).) Further, just as in *AT&T*, appellants here received actual notice of the new rate design proposal and had an

opportunity to present evidence at the hearing regarding it.¹⁴ Thus, *AT&T* compels the conclusion that the notices here were proper.

Nor does OCC's reliance on two recent Commission decisions provide support for its argument. (OCC Br., p. 13.) In *In re Eastern Natural Gas Co.*, Case No. 08-940-GA-ALT, and *In re Pike Natural Gas Co.*, Case No. 08-941-GA-ALT, two gas companies applied to change their rates to permit a "decoupled" rate; neither company sought to increase its rates. The companies' applications did not contemplate providing notice of the application to the public. The Commission upheld the Staff's determination that the applications failed to comply with various statutory requirements because of, among other reasons, the absence of such notice. The Commission rejected the companies' argument that no notice was required because the companies were not seeking to increase rates. Commission Entry, Case Nos. 08-940-GA-ALT, *et al.*, dated Nov. 5, 2008, pp. 3-4 (OCC Supp., pp. 392-93). Thus, these cases, at most, stand for the unremarkable proposition that notices before or around the time of an application must reflect the substance of that application. As demonstrated above, the notices in this case complied with those statutes.¹⁵

¹⁴ Indeed, if anything, the public here actually had *more* notice than in *AT&T*. In that case, the Commission first raised the charge it ultimately adopted subsequent to the issuance of the Staff Report. Thus, none of the pre-hearing notices in *AT&T* mentioned the new rate charge. Here, in contrast, the published hearing notices informed all parties, other interested persons, and the general public that SFV was an issue in the case. (Commission Entry, pp. 4-6 (OCC App., pp. 65D-65F).) Thus, any person interested had an opportunity to participate at the hearing on that issue.

¹⁵ Moreover, OCC has failed to show any prejudice from the allegedly defective notice. In fact, in their post-hearing briefing, OCC stated that the public was well aware of the SFV/rate design issue. (*See, e.g.*, OCC Post-Hearing Br., p. 1 (recounting that an "unprecedented . . . number of consumers attend[ed]" and testified at local public hearings, with participants primarily concerned about SFV).) In its rehearing application below, OCC also noted that testimony from "63 of 175 consumers" and "over 275 [consumer] letters" were directly related to SFV. (*See* Reh'g App., pp. 1 n. 1, 36.) Seven parties representing the interests of residential customers

Proposition of Law No. 2

Because cost-causation principles are a “basic underlying consideration” in setting utility rates, City of Columbus v. Pub. Util. Comm’n (1992), 62 Ohio St. 3d 430, 438, an SFV rate design is proper when it better aligns a utility’s rates with the utility’s costs to provide service and when the total increases in bills are relatively small.

Appellants attempt to dress their substantive challenges to the approved SFV rates in legal garb by arguing that the Commission violated Ohio law in two ways. First, they argue that the Commission improperly departed from its precedents. Second, they argue that the decision here is inconsistent with statutory policies encouraging conservation. As demonstrated immediately below, the Commission has not departed from its precedent. Because the approved SFV rates better reflect DEO’s costs, the Commission’s decision here is consistent not only with Commission precedents, but also with case law from this Court. Further, Appellants’ attempt to argue that the SFV rates here do not properly reflect the need for gradualism in rate design founders on the facts. In sum, the Commission’s adopted rate design is well-supported by Ohio law and the record below.

A. Cost Causation Is A Long Recognized And Important Principle In Rate Design.

The order at issue implements a rate design principle that both the Commission and this Court have long recognized is necessary for fair and just rates – the principle that a rate structure should accurately reflect the cost of providing service. This principle, called cost causation, is “the basic underlying consideration” in rate making. *City of Columbus v. Pub. Util. Comm.*

(continued...)

participated in this case. Even if the notice at issue was defective (which it is not), OCC has failed to show any prejudice.

(1992), 62 Ohio St. 3d 430, 438; *see* R.C. 4909.151 (DEO App., p. 4) (authorizing the Commission to “consider the costs attributable to . . . service” in the rate-making process). The Commission commonly considers cost causation in assessing rate applications (as it did here). *See, e.g., In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Authority to Increase Rates for Distribution Service*, PUCO Nos. 07-551-EL-AIR, *et al.*, Op. and Order dated Jan. 21, 2009, p. 14 (DEO Supp., p. 166; *In re Review of SBC’s Ohio TELRIC Costs for Unbundled Network Elements*, PUCO No. 02-1280-TP-UNC, Op. and Order dated Nov. 3, 2004, p. 77 (DEO Supp., p. 161).) Similarly, this Court evaluates Commission orders on whether those orders properly incorporate consideration of cost causation, and it will uphold those orders that do. *See, e.g., Green Cove Resort I Owners’ Association v. Pub. Util. Comm’n* (2004), 103 Ohio St. 3d 125, 129-130 (deferring to Commission’s “unique rate-design expertise,” where differing rates were established based on cost-of-service); *Myers v. Pub. Util. Comm’n* (1992), 64 Ohio St. 3d 299, 302, (rejecting customer’s price discrimination claim because it did not constitute violation of “valid, cost-causation considerations”); *Townships of Mahoning County v. Pub. Util. Comm’n* (1979), 58 Ohio St. 2d 40, 49, (remanding proceedings for additional consideration of cost-of-service); *Buckeye Lake Chamber of Commerce v. Pub. Util. Comm’n* (1954), 161 Ohio St. 306, 312, (approving rate differential among communities because of differences in cost of service). **Indeed, OCC’s own expert acknowledged that “properly designed rates send proper price signals when they properly reflect the company’s costs.”** (Tr. V, pp. 25-26 (Radigan Cross) (DEO Supp., pp. 99-102).) Appellants cannot now paint cost-causation principles as something “new.” Thus, contrary to OCC’s claims, the Commission has not “turned its back on thirty years” of rate design precedent. (OCC Br., p. 14.)

B. The SFV Rate Design Approved In This Case Properly Reflects Cost Causation Principles.

The SFV rates that the Commission adopted here reflect settled cost-causation principles. The record evidence shows that the overwhelming majority of DEO's distribution costs do not vary from customer to customer in a given class, regardless of differences in usage. (DEO Ex. 1.4, p. 9 (Murphy Fourth Supplemental Direct) (DEO Supp., p. 64).) By approving an increase in the fixed distribution charge (and by reducing the monthly volumetric distribution charge), the Commission has more closely aligned the two charges within the distribution service portion of a customer's bill with how DEO incurs costs to provide distribution service to that customer. Simply put, under the SFV rates adopted here, more of the fixed costs of distribution will be collected through a fixed charge on the distribution portion of the bill. Therefore, the Commission properly found that the SFV rate design "promotes the regulatory objective of providing a more equitable cost allocation among customers, regardless of usage." (Op. and Order, p. 24 (OCC App., p. 46).)

At hearing, OCC attempted to undercut this conclusion through the testimony of Frank Radigan, its rate design witness, who stated that distribution costs are higher for customers who use more gas. (OCC Ex. 21, pp. 6-8 (Radigan Direct) (OCC Supp., pp. 167-69).) But on cross-examination, Mr. Radigan candidly admitted he had not "looked at a single design layout, . . . service layout, [or] main layout of any customer in East Ohio's territory." (Tr. V, pp. 27-28 (Radigan Cross) (DEO Supp., pp. 103-106).) He failed to identify *any* cost inappropriately allocated to residential customers. By contrast, DEO's witnesses Jeffrey Murphy and Cliff Andrews¹⁶ both testified that DEO's costs of service will not generally vary with usage. (See Tr.

¹⁶ Mr. Murphy was Director, Pricing and Regulatory Affairs for DEO. (DEO Ex. 1.0, p. 1 (Murphy Direct) (DEO Supp., p. 12).) Mr. Andrews was Business Development Manager. (DEO Ex. 6.0, p. 1 (Andrews Direct) (DEO Supp., p. 20).)

I, pp. 226-227 (Andrews Cross) (DEO Supp., pp. 60-61); DEO Ex. 1.4, pp. 9-10 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 64-65).)

The Commission properly weighed this evidence and concluded that SFV best reflects the principle of cost causation. (Op. and Order, pp. 24-26 (OCC App., pp. 46-48).) That finding is not contrary to the manifest weight of the evidence. Given that finding, the rate order here does not reflect a deviation from precedent. Rather, it reflects the Commission's long-standing commitment to cost causation.

C. The SFV Rate Design Did Not Reflect a Change in Principles.

OCC alleges that the Commission failed to explain the need for a change in rate design, or why prior rate design precedent was inapplicable. (OCC Br., p. 14.) OCC is wrong on both counts. In fact, the Commission described at length the reason for the shift from volumetric rates to SFV – dramatic structural changes in the gas market. As the Commission explained:

The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record documents the sales-per-customer trend in recent years and reflects that, when prices began to rise substantially, DEO's average weather-normalized use per customer declined each year by over six percent. (DEO Ex. 1.0 at 41; Staff Ex. 1 at 34.) *Under traditional rate design, the ability of a utility, like DEO, to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on DEO's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.* [Op. and Order, p. 22 (OCC App., p. 44) (emphasis added).]

In light of the Company's negative sales trends,¹⁷ the Commission correctly found that the prior rate design, with a low fixed charge and high volumetric charge, simply posed too great

¹⁶ The negative sales trend experienced by DEO was un rebutted at hearing. As noted, since 1990, DEO has seen per customer usage decrease by over 24 percent. (See DEO Ex. 1.4, p. 13 (Murphy Fourth Supplemental Direct) (DEO Supp., p. 68) (noting 24 percent decrease in residential usage-per-customer since 1990 and projecting an additional annual decline of 1-2

a risk to DEO's revenue needs (and, by extension, to the quality of service to DEO's customers).¹⁸ (Op. and Order, p. 22 (OCC App., p. 44).) Under these circumstances, the Commission is not required to adhere rotely to an outmoded rate design model. This Court should reject Appellants' request to fashion such a straitjacket for the Commission's discretion.

D. The Approved Rates Reflect Gradualism.

According to Appellants, under the Commission's case law, the only consideration in rate design is gradualism. (See OCC Br., pp. 14-15; OPAE Br., pp. 7-8.) Further, Appellants attempt to show that the rates approved here are inconsistent with gradualism, an argument they make by focusing solely on the customer charge.¹⁹ (See OCC Br., pp. 15-16; OPAE Br., pp. 9-11.)

(continued...)

percent.) OPAE belatedly attempts to challenge that fact here, arguing that there were a few years in which sales increased over the immediate prior year. (OPAE Br., p. 22.) That certain years were slight outliers from the seventeen year general substantial decrease in usage neither is surprising nor refutes the fact that a decrease in usage occurred. Gas usage is highly dependent on weather. Thus, a colder than normal winter may result in one year's sales being higher than the previous year. Yet even considering such variations, it is unmistakable that a large part of DEO's load is gone, that a long-term downward trend has occurred and that this trend will continue into the foreseeable future. (Oral Argument Tr., p. 12, Ex. 1, p. 2 (DEO Supp., pp. 123-24, 136).) Indeed, OPAE points to no evidence to show that DEO should expect to see an increase in sales or per customer usage anytime soon.

¹⁸ OPAE contends that this rationale for SFV rates is somehow "unfair" because SFV rates, in OPAE's view, represent an improper "guarantee" to DEO that it will recover a certain "risk free" amount of revenue. (OPAE Br., p. 15.) This view is easily refuted. For example, nothing guarantees DEO any specific number of customers. As the economy in northeast Ohio deteriorates, businesses and homes are shuttered, leaving DEO with a diminishing customer base. With fewer customers, DEO will receive less revenue through fixed customer charges. Further, OPAE ignores that a part of DEO's revenue is still dependent upon recovery of costs through volumetric charges. Thus, DEO's ability to recover its costs is subject to not only the fate of the economy in the Company's service territory, but also the unpredictability of weather.

¹⁹ In its effort to have this Court erroneously focus on the fixed customer charge to determine whether the approved rates are consistent with gradualism, OCC and OPAE cite two utility cases from this Court. Apparently, Appellants argue that these cases somehow support the view that fixed charges in rates must remain at or near their previous levels to be acceptable. (OCC Br., p. 14, n. 20; OPAE Br., pp. 16-17.) Neither support Appellants' argument. In *Office of Consumers' Counsel v. Pub. Util. Comm'n* (1984), 10 Ohio St. 3d 49, the Commission had

There are a number of things wrong with Appellants' arguments. To begin, as demonstrated above, there are other important considerations in rate design, such as cost causation. The rates at issue better reflect cost causation and thus, according to OCC's expert, reflected "properly set rates." (Tr. V, pp. 25-26 (Radigan Cross) (DEO Supp., pp. 99-102).)

Next, focusing solely on the fixed distribution customer charge, Appellants miss the proverbial forest for the trees. As noted, there are several components to a gas bill, only one of which is the fixed distribution charge. And of these various components, the *overwhelming* portion of the bill is the commodity cost, which comprises as much as 75 to 80 percent of the total bill. (Tr. IV, pp. 66-67, 87 (Murphy Re-Direct) (DEO Supp., pp. 88-91; OCC Supp., p. 73) (explaining that commodity portion is not only largest part of the bill, but also the most volatile); Tr. V, pp. 22-23 (DEO Supp., pp. 93-96) (OCC witness Radigan acknowledging that the total bill is "biggest driver of usage decisions" and that gas cost is the largest portion of most bills).)

By focusing solely on the increase in the fixed distribution charge, Appellants would have this Court ignore the *offsetting decrease* in the volumetric distribution charge. A proper comparison for GSS/ECTS customers in DEO's Eastern Division follows:

(continued...)

previously ordered a four-year "phase-in" of station connection costs for a telephone company according to pre-established percentages. *Id.* at 50. Two years later, the Commission allowed the utility to recover 25 percent more than the "phase-in" permitted for that year. *Id.* at 50-51. This Court reversed that finding. Similarly, in *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm'n* (1975), 42 Ohio St. 2d 403, this Court reversed a Commission order that excluded a particular piece of property from rate base, where it had come to the opposite conclusion in two prior rate cases. *Id.* at 416.

The instant case is distinguishable from the cases discussed above. Here, the Commission has never determined what the appropriate customer charge for DEO should be given its existing costs. The last time that the Commission set distribution rates for DEO was over fourteen years ago. The Commission certainly is not bound by any determination about DEO's rates made so long ago. Even if it were so bound, the Commission in this case did explain why it was going to implement a new rate design.

	<u>Prior Charge</u>	<u>Year 1</u>	<u>Year 2</u>
Customer/Fixed Charge	\$5.70	\$12.50	\$14.50
Volumetric Charges (Per Mcf)	\$1.2355		
0-50 Mcf		\$.625	\$.355
50+ Mcf		\$1.0510	\$.603

(Staff Ex. 3B at Ex. SEP-3 (Puican Second Supplemental Direct) (DEO Supp., p. 76).)²⁰

For the average customer, using around 100 Mcf of gas per year, the total bill will increase (over the prior rates) by 0.5 percent in “Year One” and another 1.0 percent in “Year Two.” (Oral Argument Tr., Ex. 1, pp. 5-6 (DEO Supp., pp. 139-40).)

After accounting for the increase in rates because of the stipulated increase in revenue for DEO, the difference between the two rate design proposals, when reflected in the total bill, is negligible for most customers. The overwhelming majority of DEO’s residential gas customers use between 50 and 150 Mcf per year. (Oral Argument Tr., pp. 14-15, Ex. 1, p. 4 (DEO Supp., pp. 127-30, 139).) The difference in monthly bills between Appellants’ suggested rate design and the approved rate design for most DEO residential customers is as follows:

YEAR ONE			
	<u>50 Mcf</u>	<u>100 Mcf</u>	<u>150 Mcf</u>
Appellants’ Design	\$65.89	\$125.82	\$185.74
Approved Design	\$69.77	\$126.46	\$183.14
Difference	\$3.88 5.9%	\$0.64 .5%	(\$2.60) (1.4%)

²⁰ See note 7, *supra*.

YEAR TWO			
	<u>50 Mcf</u>	<u>100 Mcf</u>	<u>150 Mcf</u>
Appellants' Design	\$65.89	\$125.82	\$185.74
Approved Design	71.62	127.13	182.64
Difference	\$5.73 8.7%	\$1.31 1.0%	(\$3.10) (1.7%)

(*Id.* at pp. 14-15, Ex. 1, pp. 5-6.)

Thus, most residential customers will be only modestly affected by the implementation of SFV rates. In the end, the decrease in the volumetric portion of the distribution rates offsets much of the increase in the fixed portion. This offset substantially minimizes any gradualism concerns that might otherwise arise as a result of changes to the fixed charge.²¹

Yet, even looking solely at the fixed charge, the Commission's order incorporates gradualism in at least two ways:

- DEO will not recover the full amount of its fixed distribution costs through the fixed charge. (*See* DEO Ex. 1.4, p. 8 (DEO Supp., p. 63).) Rather, even under Year Two rates, the fixed charge will cover only 84 percent of annual base-rate revenues for the average residential customer. (*Id.*)
- The modified SFV design approved by the Commission will be phased in over two years. And even after the transition to Year Two rates, DEO's rate design will not be "pure" SFV (*i.e.*, some of DEO's fixed costs still will be recovered through volumetric rates). (Op. and Order, p. 25 (OCC App., p. 47).)

These facts ease the SFV transition for DEO's customers, consistent with gradualism.

²¹ OCC expends great effort comparing the fixed-charge increase under SFV to changes in fixed charges in other cases involving different utilities. (OCC Br., pp. 15-19.) But these examples are not on point. In each of those cases, the utility was seeking to increase the fixed component of the distribution rate without any offsetting change to the volumetric component of the distribution rate. *See, e.g., In re Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Op. and Order, dated Dec. 12, 1996 (OCC Supp., pp. 522-23) (discussing whether amount of residential customer charge should be maintained or increased) (OCC Supp., pp. 522-23); *In re Applications of Columbia Gas of Ohio, Inc., to Establish a Uniform Rate for Natural Gas Service*, Case No. 88-716-GA-AIR, *et al.*, Op. and Order dated Oct. 17, 1989 (DEO Supp., pp. 154-55) (discussing whether rate *should be applied uniformly across* regions).

Proposition of Law No. 3

Although conservation is but one of many factors that the Commission must consider in imposing a rate design under Revised Code Sections 4929.02 and 4905.70, SFV rates promote conservation because they: (1) send appropriate price signals; (2) minimally affect the total bill on which conservation decisions are made; and (3) align the Company's interests with its customers to encourage conservation.

A. Whether The Rate Design Promotes Conservation Is One Of Many Factors To Be Reviewed In Determining The Propriety Of A Rate Design.

Contrary to Appellants' suggestions, conservation is but one of a long list of public policies that the Commission "shall follow" in exercising its authority. *See* R.C. 4929.02 (OCC App., pp. 77-78). Indeed, Section 4929.02 expressly lists twelve policies, some of which, in a given case, may conflict with each other. For example, Commission efforts to promote the availability of natural gas, *see* R.C. 4929.02(A)(1) (OCC App., p. 77), may reduce gas prices, which may in turn help to increase the competitiveness of Ohio industry by lowering energy costs, *see* R.C. 4929.02(A)(10) (OCC App., p. 78), while simultaneously hurting incentives for conservation, *see* R.C. 4929.02(A)(12) (OCC App., p. 78). The Court has never suggested that any one of these "public policies" has a talismanic nature that requires slavish devotion from the Commission. Rather, the statute requires the Commission to engage in careful balancing among various goals, which is exactly what the Commission did here.

Appellants similarly find no support in Section 4905.70, which they also cite. In pertinent part, that statute states, "The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs." *See* OCC App., p. 68. Here, there is no question that the Commission has initiated energy efficiency

programs, including requiring DEO to spend \$9.5 million annually on new DSM programs, a nearly tripling the level of previous funding. (Stip., p. 4 (OCC Supp., p. 4).)

Moreover, Appellants essentially ask the Court to ignore the remaining language in Section 4905.70, which requires the Commission to “promote economic efficiency,” and “take into account long-run incremental costs.” One of the prime reasons that the Staff recommended an SFV rate design, was that given decreasing gas consumption per customer, DEO’s then-existing rate structure failed to provide adequate recovery on a long-run basis. The SFV rate design approved by the Commission, on the other hand, more closely follows cost-causation principles. It thus promotes economic efficiency, while aligning DEO’s cost recovery with how it actually incurs those costs. (Op. and Order, p. 24 (OCC App., p. 46).)

In fact, the arguments that Appellants press here are remarkably similar to the arguments that OPAE advanced, and this Court rejected, in *Ohio Partners for Affordable Energy v. Pub. Util. Comm’n* (2007), 115 Ohio St. 3d 208. There, as here, OPAE attacked a Commission order contending that the order violated the public policy outlined in Section 4929.02(A)(4). (There, it was an order permitting DEO to provide commodity service through alternative regulation.) In affirming the Commission order, the Court noted that the Section 4929.02 factors are guidelines that should be weighed, and that the Commission must look to the total effect of the rate structure:

The record supports the commission’s finding that Dominion’s application comports with the policy guidelines of the General Assembly as set forth in R.C. 4929.02. The policy established in R.C. 4929.02(A)(4) is a guideline for the commission to consider when entertaining requests for exemptions from regulation. Here, the commission weighed the cost effective nature of Dominion’s services and the current offering of demand-side natural gas services and goods. The commission reasonably found that the advantages added by a competitive market and the continuation of the \$3.5 million conservation program satisfied the considerations set forth in R.C. 4929.02(a)(4). [*Id.* at 213.]

A similar rationale applies here. The Commission can and should balance a number of factors in determining the level and design of utility rates. That is exactly what the Commission did in this case.

B. SFV Rates Promote Conservation.

Appellants contend that SFV rates here are antithetical to conservation efforts because these rates allegedly send the “wrong price signals.” Specifically, Appellants claim that: (1) SFV rates send the wrong price signal to customers by reducing the volumetric charge and therefore, the customer’s incentive to be more energy efficient (OCC Br., pp. 23-24; OPAE Br., p. 18); (2) SFV rates discourage investment by customers in energy efficiency because the rates extend the payback period for such investment (OCC Br., pp. 24-26; OPAE Br., p. 20); and (3) the more a customer saves, the higher their gas costs per unit of gas consumed (OPAE Br., p. 19). Appellants are wrong as to each allegation.

The record evidence shows that, contrary to Appellants’ claims, SFV rates send the proper price signal to customers. (Op. and Order, p. 24 (OCC App., p. 46).) “Proper price signals” occur when the price that a customer sees matches the costs of providing the good or service. (*Id.*) OCC’s witness on rate design agreed that rates send proper price signals when those rates properly reflect costs. (Tr. V, pp. 25-26 (Radigan Cross) (DEO Supp., pp. 99-102).) Indeed, for a customer contemplating conservation, properly set rates reflect the true costs avoided with decreased usage. (DEO Ex. 1.4, pp 10-11 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 65-66).)

Here, the record evidence showed that the overwhelming majority of distribution costs are fixed. The record evidence showed that under Year One rates, DEO will collect approximately 71 percent of its fixed costs through fixed charges. In Year Two, that will grow to 84 percent. (*Id.* at 7-8.) To be sure, neither of these is a completely accurate price signal –

which will not happen unless and until DEO moves to fully SFV rates – but they are far closer to “proper price signals” than DEO’s former rates, under which DEO collected approximately 30 percent of its fixed distribution costs through fixed charges.

What’s more, Appellants utterly ignore the likely effect (or, more appropriately, lack of effect) on conservation of the alternate rate design under consideration and supported by Appellants, the Sales Reconciliation Rider (“SRR”). Generally under the SRR, a shortfall in recovered revenues (when compared to DEO’s authorized revenue requirement specified in a rate order) would be added in the next year’s charges at the SRR.²² Such a rate design would have several anomalous effects, including:

- Customers would have greater uncertainty with respect to the specific impact of their conservation efforts. By conserving in one year, customers would cause an increase in the SRR charge in a subsequent year. Indeed, if everyone conserved at the same rate, there would be no reduction in distribution rate revenues eventually paid by customers. (*Id.* at 10-11.)
- With an SRR, non-conservers subsidize conservers. Thus, those least able to conserve would subsidize those who could afford to implement conservation measures. (*Id.*)

Appellants similarly ignore the record evidence when they claim that SFV rates deter investments in energy efficiency. OCC’s own expert agreed that a customer’s *total bill* is the “biggest driver of usage decisions,” and that the commodity charge (*i.e.*, the charge for the natural gas itself) is the largest portion of most bills. (Tr. V., pp. 22-23 (Radigan Cross) (DEO

²² Similarly, an over-recovery of revenues relative to the authorized revenue level would result in a decrease in charges through the SRR. Further, over-recoveries or under-recoveries of the amounts targeted for collection through the SRR (*e.g.*, an under-recovery of a previously recognized under-recovery) would be “trued-up” through another adjustment in the SRR.

Supp., pp. 93-96).) As Staff witness Puican put it, “*Customers will always achieve the full value of the gas cost savings regardless of the distribution rate.*” (Staff Ex. 3, p. 4 (Puican Direct) (OCC Supp., p. 276).)

The undeniable fact is that customers who use less will pay less. The following two charts show the difference in cost savings between SFV and “traditional” rates that a customer would achieve in Year One and Year Two, assuming that the customer reduces consumption by 25 percent:

Monthly Savings (Year 1)				
Annual Usage Before Conserving				
		<u>50 Mcf</u>	<u>100 Mcf</u>	<u>150 Mcf</u>
“Traditional”	Rates	\$14.98	\$29.96	\$44.96
Savings				
SFV Rates	Savings	\$14.17	\$28.34	\$42.52
Difference		\$0.81	\$1.62	\$2.43

Monthly Savings (Year 2)				
Annual Usage Before Conserving				
		<u>50 Mcf</u>	<u>100 Mcf</u>	<u>150 Mcf</u>
“Traditional”	Rates	\$14.98	\$29.96	\$44.95
Savings				
SFV Rates	Savings	\$13.88	\$27.76	\$41.63
Difference		\$1.10	\$2.20	\$3.32

(Oral Argument Tr., pp. 15-16, Ex. 1, pp. 7-8 (DEO Supp., pp. 129-132, 141-42).) Thus, for example, a customer who had been using 50 Mcf and who reduced gas usage by 25 percent (to 37.5 Mcf) would experience a monthly cost savings of \$14.98 under “traditional” rates and \$14.17 under the approved SVF rates, a difference of 81 cents.

This data demonstrates two things. First, it shows that customers of all usage levels will save money under the approved SFV rates if they use less gas. Second, the data refutes the notion that customers' decisions about conservation will be affected by SFV rates in any but a *de minimis* way. As this chart shows, the most significant savers "suffer" a delayed annual payback of less than forty dollars (\$3.32/month times twelve). Lower use customers who conserve less will experience even less of a delay. Thus, Appellants' hand wringing about delayed or deferred conservation decisions is much ado about nothing.²³ Simply put, those who reduce their bills will pay less for their gas under SFV rates.²⁴

Moreover, Appellants overlook important ways in which the SFV rates will *enhance* conservation efforts. In particular, the new rate structure reduces financial barriers to DEO's investment in energy efficiency. (Op. and Order, pp. 22-24 (OCC App., pp. 44-46).) Because DEO's ability to recover its fixed costs was largely dependent on achieving a certain level of gas deliveries, DEO had little incentive to encourage conservation. As gas consumption decreased, DEO's ability to recover its costs (much less any margin on those costs) was jeopardized. (DEO Ex. 1.4, pp. 12-13 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 67-69).) Now,

²³ Appellants' concerns regarding lengthened payback periods are, at bottom, based on nothing. OPAE says, for example, that the SFV rate design will put conservation investments "out of the reach of many homeowners." (OPAE Br., p. 19.) It cites no evidence for this statement. Indeed, as noted, the evidence is to the contrary. In fact, it's hard to understand how a delay in annual payback of less than \$12 for low use customers and less than \$40 for high use customers would hinder any decisions about conservation.

OPAE also asserts that with SFV rates will extend payback periods beyond the life of the efficiency measure. (*Id.* at 20.) OPAE again cites *nothing* to support this statement. At most, in their discussions of lengthened payback periods, OCC and OPAE cite the testimony of Mr. Radigan. (OCC Br., p. 25; OCC Br., p. 20.) But Mr. Radigan did no analysis of the effect of the proposed rates on customers' bills and savings and, in fact, offered nothing other than his conclusory opinion that payback periods would be lengthened under SFV rates.

²⁴ Given this fact, OPAE should support the approved SFV rates. According to OPAE, "the traditional price signal which encourages conservation" is "the more natural gas a customer uses, the more he or she pays." (OPAE Br., p. 18.) That is unquestionably the case here.

because the recovery of fixed costs is not for the most part reliant on gas volumes, those conservation disincentives are largely removed.

The order in this case also addresses conservation in another way as well. In particular, under the terms of that order, DEO will invest \$9.5 million in energy efficiency programs. (Stip., p. 4 (OCC Supp., p. 4).) In short, the order fully supports investments in energy efficiency. Appellants are wrong to suggest otherwise.

Proposition of Law No. 4

The Court will not substitute its judgment for that of the Commission on a factual issue where, as here, Appellants have not shown that the Commission's orders are against the manifest weight of the evidence.

In arguing that the Commission's orders are against the manifest weight of the evidence, Appellants bear a heavy burden. On issues of fact, this Court will not "substitute its judgment" for the Commission's unless the Commission's order is "manifestly against the weight of the evidence, or . . . so clearly unsupported by it as to show misapprehension, mistake or willful disregard of duty." *General Motors Corp. v. Pub. Util. Comm'n* (1976), 47 Ohio St. 2d 58 (syllabus). "Clearly, the commission has considerable discretion in setting rate structures, and, when the commission approves schedules representing its own judgment based on evidence before it and an exercise of its sound discretion, the commission has exercised proper judgment pursuant to R.C. 4909.15." *Id.* at 65. Appellants have not come close to meeting this burden.

Instead, perhaps recognizing the futility of Appellants' position under the correct standard of review, OCC attempts to substitute a lower one. It argues that the Commission's requirement that DEO perform certain on-going SFV studies means that there are new facts yet to be discovered, rendering the current record incomplete. (*See* OCC Br., pp. 27, 30.) This is nonsense. The Commission is not required to predict the future or delay indefinitely its decisions

until all conceivably relevant facts are discovered and presented. Rather, the Commission must give the parties a full opportunity to present evidence and develop the record and then base its decisions on that record evidence.

With regard to the evidence actually *in the record*, Appellants ignore the salient facts. As demonstrated below, the Commission's findings regarding the effects of SFV on low-use customers or on low-income customers were well-supported by the evidence. The studies ordered by the Commission are simply in furtherance of its on-going jurisdiction over DEO's rates. *See* R.C. 4905.04 (DEO App., p. 1) (vesting Commission with general supervisory powers); R.C. 4909.13 (DEO App., p. 2) (authorizing supplemental rate-making proceedings); R.C. 4909.27 (DEO App., p. 3) (authorizing Commission to investigate rates on its own initiative). The studies do not undermine the current SFV orders. Further, OCC's assertion that the Commission somehow "rushed" to judgment is belied by the voluminous record.

A. The Commission Properly Considered The Effect Of SFV Rates On All Customers.

In its orders below, the Commission fully explained the well-documented benefits of SFV rates. As noted, SFV rates will, among other things:

- more closely follow how DEO incurs its costs (Op. and Order, p. 24 (OCC App., p. 46); DEO Ex. 1.4, p. 11 (Murphy Fourth Supplemental Direct) (DEO Supp., p. 66));
- provide minimal differences in the total bill experienced by most customers (Op. and Order, p. 24 (OCC App., p. 46); Oral Argument Tr. pp. 13-15, Ex. 1, pp. 3-6 (DEO Supp., pp. 125-30, 137-40); *see* Tr. V, pp. 22-23 (DEO Supp., pp. 93-96));
- provide appropriate price signals to reflect correctly savings achieved through conservation (Op. and Order, p. 24 (OCC App., p. 46); Tr. IV, p. 87 (Murphy Re-Direct) (OCC Supp., p. 73)); and

- remove disincentives to DEO to encourage conservation (Op. and Order, pp. 23-24 (OCC App., pp. 45-46); DEO Ex. 1.4, p. 9 (DEO Supp., p. 64).

Faced with this record, Appellants attempt to focus this Court's attention on certain classes of customers that Appellants believe will receive unfair treatment under the approved SFV rate design: specifically, customers who use relatively less gas or who have low incomes. But the record shows that service to low-use customers has been previously subsidized by other customers and that the approved SFV rates have merely reduced the subsidy that other customers will pay for that service. With regard to low-income customers, contrary to Appellants' suggestion, these customers will, on average, *benefit* under SFV rates. Appellants contend that the Commission's order to have DEO undertake further studies and to develop a pilot program for the potential benefit of low-income customers somehow undercuts the record evidence in support of SFV rates. As demonstrated below, Appellants' suggestion is wrong.

1. DEO's high-use customers subsidize its low-use customers.

OCC asserts that one "known" effect of SFV is that low-use customers will be "forced to subsidize" high-use customers, and that low-use customers are thereby harmed. (OCC Br., pp. 35-36.) Though OCC assumes this to be true, the evidence shows the opposite: high-use customers continue to subsidize low-use customers under SFV. Thus, OCC's argument collapses under the weight of its own faulty premise.

A subsidy occurs when one customer or group of customers pays more than its share of costs or pays for costs incurred by others. *See, e.g., Elyria Foundry Co. v. Pub. Util. Comm'n* (2007), 114 Ohio St. 3d 305, 315-316 (subsidy occurs when utility uses "revenues from [one service] to subsidize the cost of providing [another] service"). Contrary to OCC's suggestion, the evidence here shows that under DEO's former rate structure, low-use customers did not pay

the entirety of their costs, and thus were receiving a subsidy from high-use customers. (Tr. IV, p. 22 (Murphy Cross) (DEO Supp, p. 78-79).)

Specifically, according to DEO witness Cliff Andrews, if the GSS/ECTS rate class did not include non-residential customers (*i.e.*, high-use industrial customers), residential customers would pay more. (Tr. I, p. 235 (Andrews Re-Direct) (OCC Supp., p. 82C).) This evidence is confirmed by the Company's recent Cost of Service Study ("COSS"), which shows that, after proper adjustments for the PIPP program, non-residential customers account for a higher rate of return than do residential. (Updated COSS at Sch. E-3.2, pp. 5, 9-11 (OCC Supp., pp. 344); DEO's Memo. Contra Joint Advocates' Joint Motion to Reopen the Rec., PUCO Nos. 07-829-GA-AIR, *et al.*, p. 7 (DEO Supp., p. 152).)

Low-use customers' costs were subsidized by high-use GSS/ECTS customers under "traditional" rates, and they continue to be subsidized under SFV. OCC does not – and cannot – point to any record evidence that contradicts this central point. Instead, OCC argues that because low-use customers pay more per unit of gas under the SFV rate structure than they had under the old structure, those customers must therefore be subsidizing high-use customers. (OCC Br., p. 36.) This simply does not follow. Although these customers may pay more now than under "traditional" rates, low-use customers are not subsidizing (*i.e.*, paying toward the cost of) usage by high-use non-residentials. Rather, the SFV rates reflect, at most, *a partial decrease of the existing subsidy* from high to low-use customers. The fact that low-use customers may receive a lower subsidy does not mean that the SFV rates are unreasonable or unlawful, or that they should be reversed by the Court.

OCC argues that the Commission's order requiring DEO to provide an updated COSS indicates that the Commission's findings regarding the effect of SFV rates on low-use customers

are deficient. OCC argues that the Commission has not explained why low-use customers should be “forced” to subsidize high-use customers. (OCC Br., p. 31.) In doing so, however, OCC again begins with a faulty premise. As noted, the record evidence shows the opposite – high-use GSS/ECTS customers subsidize low-use customers in that class. (See p. 35, *supra*.)

Failing this, OCC tries another tack, arguing that the inclusion of both high-use and low-use customers in the GSS/ECTS class leads “inevitably” to subsidies. (OCC Br., pp. 31-33.) OP&E similarly argues that SFV rates for the GSS/ECTS class are “unfair” because that class of customers is not homogenous and that SFV rates approved here treat “dissimilar customers the same.” (OP&E Br., p. 12.) All of this misses the point. Although gas usage varies among the customers in the GSS/ECTS class, the actual costs incurred to serve them do not. (DEO Ex. 1.4, pp. 8, 9 (Murphy Fourth Supplemental Direct) (DEO Supp., pp. 63, 64); Tr. IV, pp. 39-40 (Murphy Cross) (DEO Supp., pp. 82-85).)²⁵ In fact, if anything, the inclusion of high-use customers in the GSS/ECTS rate class leads to *lower* bills for low-use customers. (Tr. I, p. 235 (Andrews Cross) (OCC Supp., p. 82C).)

More fundamentally, OCC’s argument fails because the updated COSS has nothing to do with the current SFV rate design. The Commission’s order implements Year One and Year Two rates, which reflect a “modified” SFV design.²⁶ DEO will not recover all of its fixed costs through the fixed charge. (DEO Ex. 1.4, p. 8 (DEO Supp., p. 63).) The Order does not, however, set out DEO’s rates beyond Year Two. Those rates, according to the Commission, may incorporate a “full straight fixed variable rate design.” (Op. and Order, p. 25 (OCC App., p.

²⁵ OP&E asserts, “It is obvious that the cost to serve a customer using 50,000 ccf per year is different than the cost to serve a customer at a residential average of less than 1000 ccf per year.” (OP&E Br., p. 13.) OP&E cites no record support for this “obvious” point. Nor does OP&E demonstrate that there is any evidence to show that DEO’s *fixed costs* per customer to serve these customers are appreciably different.

²⁶ See note 6, *supra*.

47).) Thus, the updated COSS is intended to address the composition of the GSS/ECTS rate class in a “pure” SFV design. (*Id.* (“prior to approval of rates for the third year and beyond the Commission believes that a review of the cost allocation methodologies for the GSS/ECTS classes is appropriate”).) The COSS does not, however, bear on the Commission’s approval of “modified” SFV rates in Years One and Two.

Moreover, even were that not true, the recently completed COSS further confirms the appropriateness of the Commission’s SFV Order. In particular, contrary to OCC’s suggestion (*see* OCC Br., p. 45), the updated COSS does *not* show that residential customers subsidize non-residential customers, but instead shows exactly the opposite.

In its brief, OCC purports to set out DEO’s updated COSS as proof of its erroneous conclusion of the alleged subsidy. (OCC Br., pp. 43-49.) Unfortunately, OCC failed to account for the impact of the PIPP program where the Company’s costs are incurred solely by GSS/ECTS residential customers, but are collected from all customers. The COSS shows the specific rate of return that DEO will receive from its different service classes based on the costs allocated to and the expected revenues collected from each class. When appropriately accounting for all costs, the chart below corrects OCC’s error.

Customer Class	Rate of Return For Year 1	Rate of Return For Year 2	Rate of Return For Year 3
Overall DEO	8.48%	8.48%	8.48%
GSS/ECTS Residential	5.98%	6.59%	7.44%
GSS/ECTS Nonresidential	12.28%	9.38%	5.32%
GSS Overall	7.07%	7.07%	7.07%
LVGSS/LVECTS	16.28%	16.28%	16.28%
GTS/TSS	15.99%	15.99%	15.99%
DTS	5.15%	5.15%	5.15%
Storage	21.15%	21.15%	21.15%

(*See* DEO’s Memo. Contra Joint Advocates’ Joint Motion to Reopen the Rec., p. 7 (DEO Supp., p. 152).)

When the effects of PIPP expenses and PIPP rider payments are factored in, the rate of return on the GSS/ECTS Residential subclass remains *below* the DEO average in all three years and below the GSS/ECTS non-residential customers in Year One and Year Two. If DEO is recovering less than its overall average rate of return from one service class, it must necessarily recover a higher than average rate of return from another class. In that case, the former can properly be viewed as being subsidized by the latter. The updated COSS thus does not show that GSS/ECTS Residential customers are *paying* a subsidy. Rather, it shows that those customers are *receiving* one. Thus, the updated COSS provides no support to OCC here.

2. Low-income customers are, on average, better off under SFV rates than under a “traditional” rate design.

Appellants also complain that SFV rates are especially unfair to low-income customers. Here again, Appellants ignore the record, which establishes that DEO’s low-income customers on average *actually benefit* from SFV rates. DEO serves two categories of identifiable low-income customers: (i) those on PIPP; and (ii) those not on PIPP but who receive government assistance to pay their gas bills.²⁷ Appellants do not dispute that PIPP customers use, on average, more gas than DEO’s average residential customer. (OCC Post-Hearing Br., p. 10 (DEO Supp., p. 117) (acknowledging that the average PIPP customer consumed 30.9 Mcf more during the test year than the average residential customer); *see* Staff Ex. 3, pp. 6-7 (Puican Direct) (OCC Supp., pp. 278-279) (stating that from 2000 to 2007, the “average consumption for PIPP customers was 144.43 Mcf per year and the average consumption for non-PIPP residential customers was 110.45 Mcf per year”).) Because the volumetric distribution charge is significantly lower under SFV than under traditional rates, that means that ***DEO’s 108,000 PIPP customers will pay less on average under SFV rates than under a traditional rate design.*** (*See*

²⁷ Many of these customers are eligible for HEAP assistance. *See* note 11, *supra*.

OPAE Post-Hearing Br., p. 4; DEO Ex. 1.5, p. 3 (Murphy Surrebuttal) (DEO Supp., p. 115); Staff Ex. 3B at SEP-3 (Puican Second Supplemental Direct) (DEO Supp., p. 76).)

Moreover, the vast majority of non-PIPP low-income customers also use more gas than the residential average. DEO performed a study in which DEO identified 59,000 non-PIPP accounts that were receiving or eligible for assistance programs to pay their bills (i.e., customers with household incomes at or below 175 percent of the federal poverty level. (DEO Ex. 1.5, pp. 1-3 (DEO Supp., pp. 113-15).) DEO found “[t]he largest 90% of [these] accounts had an average 12-month usage level of 103 Mcf, and the largest 80% had an average of 110 Mcf.” (*Id.* at 3.) The average residential customer’s usage is 99.1 Mcf per month. Thus, the Commission properly found that low-income customers pay *less* for distribution service under SFV than under “traditional” rate design. (Op. and Order, p. 23 (OCC App., p. 45) (finding that “the majority of low-income customers actually use more natural gas, on average, than those customers whose means place them above 175 percent of the federal poverty level” and would therefore “actually enjoy lower bills under the strict application of cost causation principles”).)

The Commission properly rejected OCC’s evidence regarding the effects of SFV on low-income customers. (OCC Br., p. 36 n. 62.) At hearing, OCC offered the testimony of Roger Colton, who stated that “lower income households use less natural gas than do higher income households.” (OCC Ex. 22, p. 26 (Colton Direct) (OCC Supp., p. 110).) This evidence failed to convince the Commission for two reasons.

First, OCC presented no evidence specific to DEO’s customers. Rather, Mr. Colton relied only on nation-wide data that was not “specific to Ohio,” and on state-wide data not specific to DEO’s service territory. (*Id.* at 11, 19-20 (OCC Supp., pp. 95, 103-104).) Nor did OCC present any evidence – through Mr. Colton or otherwise – suggesting that DEO’s service

territory and its customers shared the same characteristics as the nation or the state at large. As demonstrated above, DEO-specific data showed that low-income customers, on average, use more gas than the average residential customer and benefit from SFV. The Commission properly credited that evidence.

Second, although DEO's analysis incorporated actual usage data, OCC's witness gathered no data whatsoever regarding natural gas usage in Ohio. (DEO Ex. 1.5, p. 2 (Murphy Surrebuttal) (DEO Supp., p. 114) ("DEO . . . examined the 12-month usage of the [pertinent] accounts.")) Instead, Mr. Colton presented data on natural gas *expenditures*; (OCC Ex. 22, p. 11 (OCC Supp., p. 95) ("natural gas expenditures increase as each income tier increases in Ohio"), *id.*, at 17-18 (OCC Supp., pp. 101-102) (stating that there is an "increase in natural gas expenditures as income increases"), Sch. RDC-4 – RDC-8 (OCC Supp., pp. 126-130) (collecting data regarding "Monthly Natural Gas Expenditures" in Ohio).)

This is an important distinction. OCC and Mr. Colton have assumed that expenditures may be equated with consumption, but this is not necessarily the case. Given the variety of programs designed to assist low income customers cope with their gas bills,²⁸ those customers' expenditures vastly understates their consumption. Thus, expenditure data is a poor proxy for usage, particularly as it relates to low-income customers. Appellants failed to show otherwise. Accordingly, the Commission properly rejected this evidence at hearing.

²⁸ These programs include PIPP (which allows a customer to pay a percent of income), HEAP (outright financial assistance) and other programs such as the Commission's Winter Reconnection Order. *See, e.g., In re Investigation into Long Term Solutions Concerning Disconnection of Gas and Elec. Serv. in Winter Emergencies*, PUCO No. 08-951-GE-UNC, Entry dated Sept. 10, 2008, pp. 2-3 (DEO Supp., pp 163-64). In that case, the Commission imposed a moratorium on disconnections of service to low-income residential customers. Thus, an eligible customer could have used gas throughout most of the heating season with *no* payment for that service.

As a further attempt to question the Commission's finding regarding the effect of SFV rates on low income customers, OCC points to the Commission's requirement that DEO develop a low-income pilot program. This argument fails. As demonstrated above, DEO's low-income customers on average use more gas than the average customer and, therefore, benefit under SFV rates. (*See pp. 38-39, supra.*)

Further, the Commission's establishment of a pilot program is merely a recognition that there will be *some* low-income customers who may be low-use customers and thus may pay more for distribution service under SFV rates. That the Commission would want to assist those persons does not call into question the validity or reasonableness of the approved rate design. Most customers (including most low-income customers) will benefit or see little change in their overall bill under the approved SFV rate design. The Company will be better able to recover its costs. And customers and DEO will be aligned with appropriate incentives to conserve gas.

OCC is thus left to complain that the low-income pilot program isn't big enough. The size of the pilot program, however, is something that is squarely within the Commission's discretion to decide. Appellants cite no legal requirement compelling a bigger pilot program. Nor do they point to any other basis to reverse the Commission's decision on that issue, other than to allege that the impact of the approved rates on low income customers is "debatable." (OCC Br., p. 35.) Under any accepted standard of review, there is no basis to reverse the Commission's decision based on the size of DEO's low-income pilot program.

B. The Commission's Decision to Adopt SFV Rates Was Procedurally Proper and Well Considered.

OCC asserts that the Commission "rushed" to implement SFV. (OCC Br., pp. 27, 29.) There are no facts to support this argument. The rate-making process that culminated in the SFV orders began nearly two years ago, in July 2007. (*See Notice of Intent to File an Application to*

Increase Rates for Gas Distribution Service (DEO Supp., p. 1).) During that process, the Commission received 570 pages of written testimony and briefs; written correspondence from customers; six days' worth of live testimony; and input from over 150 customers at ten public hearings held throughout DEO's service area. Further, the Commission took the unusual step of holding an oral argument before the members of the Commission. (*See* Tr. VI, p. 86 (DEO Supp., pp. 110-11).) The Commission's October 15, 2008 Opinion and Order reflected consideration of issues relating to conservation, gradualism, price signals, simplicity, revenue stability, effect on low-income customers, intra- and inter-class subsidization, customer usage, fairness, and other factors, carefully evaluated and discussed over 34 pages. (*See* Op. and Order, pp. 23-26 (OCC App., pp. 45-48).) The opinion included 24 enumerated findings of fact and seven legal conclusions. (*Id.* at 28-32 (OCC App., pp. 50-54).) Such facts hardly reflect a "rush to judgment."

Astonishingly, OCC also alleges that stakeholders were not given an opportunity to participate in the SFV proceedings before the decision was made. (OCC Br., p. 28.) The facts show otherwise. All told, there were fifteen intervenors in the case below.²⁹ These parties represented residential customers, commercial and industrial customers, suppliers, marketers, low-income customers, DEO's unionized employees, the oil and gas industry, and environmental interests. They all had the opportunity to present evidence. The notion that all relevant stakeholders were not represented or were without opportunity to participate in the proceeding below is utterly without merit.

²⁹ The intervenors were Ohio Partners for Affordable Energy; Ohio Energy Group; Neighborhood Environmental Coalition; Empowerment Center of Greater Cleveland; Cleveland Housing Network; Consumers for Fair Utility Rates; Interstate Gas Supply, Inc.; Ohio Office of Consumers' Counsel; Dominion Retail, Inc.; Industrial Energy Users – Ohio; Stand Energy Corp.; Utility Workers Union of America Local G555; Integrys Energy Services, Inc.; Ohio Oil & Gas Association; and the City of Cleveland.

In truth, as reflected in its orders, the Commission's implementation of its SFV rate design was the product of careful weighing of the evidence and balancing many factors and policies. It represents the beginning of an on-going process of review. (*See Op. and Order*, p. 25 (OCC App., p. 47) (reserving consideration of rates after SFV Year 2 but noting its continued preference for "an expeditious transition to a full straight fixed variable rate design").) Both the process that led to the SFV orders and this on-going review are deliberate and open to all stakeholders. At bottom, OCC argues that SFV should not be implemented because it disagrees with the design. (OCC Br., p. 29 ("No consumer representative supports the Commission on the implementation of SFV rate design.)) But OCC is not entitled to a veto over Commission decisions, particularly where those decisions are (as here) well-supported by record evidence.

C. The Commission's DSM Directives Have No Bearing On Its SFV Findings.

OCC also complains about the demand side management ("DSM") collaborative stipulated by the parties and approved by the Commission. OCC argues that the Commission should have ordered *additional* studies before implementing SFV. But in doing so, OCC ignores the existing record evidence here.

In its argument, OCC briefly summarizes the areas it believes warrant further study, including the "impacts" of SFV on: (i) all residential customers; (ii) conservation; (iii) low-income customers; (iv) price signals; and (v) gradualism. (OCC Br., p. 42.) But the parties presented evidence regarding *all* of these issues at hearing. (*See, e.g.*, Tr. IV, pp. 65-66, 87 (DEO Supp., pp. 86-89; OCC Supp., p. 73) (SFV preserves conservation incentives); DEO Ex. 1.5, p. 3 (Murphy Surrebuttal) (DEO Supp., p. 115) (low-income customers better off under SFV); Staff Ex. 3B at SEP-1A (Puican Second Supplemental Direct) (DEO Supp., p. 72) (reflecting bill comparison between traditional design and SFV).) The Commission heard this

evidence and explicitly considered these factors in its SFV design. (Op. and Order, pp. 24-26 (OCC App., pp. 46-48).) Having lost before the Commission, OCC now seeks a “do over” of the hearing, based not on what the evidence showed then, but on what it speculates the evidence could be sometime in the future.

OPAE similarly suggests that delay in implementing DEO’s SFV rates is necessary because the Commission has not yet analyzed the effect of SFV rate designs approved by the Commission *for other utilities*. (OPAE Br., p. 23.) But such a suggestion creates a Catch-22 for the Commission. If OPAE’s logic applied, no utility would ever be the first to implement SFV rates. OPAE could always argue that SFV has not been studied. Moreover, OPAE nowhere advises the Court exactly what common traits DEO shares with those other utilities that would make such studies worthwhile. Certainly, there is no evidence on this point.

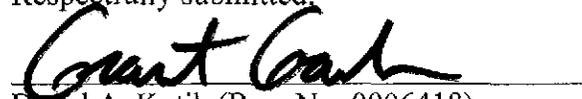
In sum, neither the Commission nor this Court have the luxury of ignoring the record in favor of fanciful hopes for prospectively developed evidence. The Commission’s order was well-supported by the record, and OCC has shown no deficiencies to warrant reversal of it.

V. CONCLUSION

For the above reasons, DEO respectfully requests that the Court affirm the Order of the Commission.

Dated: May 22, 2009

Respectfully submitted,



David A. Kutik (Reg. No. 0006418)

E-mail: dakutik@jonesday.com

(Counsel of Record)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: 216-586-3939

Facsimile: 216-579-0212

Douglas R. Cole (Reg. No. 0070665)

E-mail: drcole@jonesday.com

Paul A. Colbert (Reg. No. 0058582)

E-mail: pacolbert@jonesday.com

Grant W. Garber (Reg. No. 0079541)

E-mail: gwgarber@jonesday.com

JONES DAY

Mailing Address:

P.O. Box 165017

Columbus, Ohio 43216-5017

Street Address:

325 John H. McConnell Blvd., Suite 600

Columbus, Ohio 43215-2673

Telephone: 614-469-3939

Facsimile: 614-461-4198

COUNSEL FOR INTERVENING APPELLEE,

THE EAST OHIO GAS COMPANY D/B/A

DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief and Appendix of Intervening Appellee, The East Ohio Gas Company d/b/a Dominion East Ohio was delivered to the following via regular U.S. mail, postage prepaid, and email this 22nd day of May, 2009:

Colleen L. Mooney
Ohio Partners for Affordable Energy
1431 Mulford Road
Columbus, Ohio 43212

Joseph P. Serio
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Duane W. Luckey
Stephen A. Reilly
Anne L. Hammerstein
Office of the Ohio Attorney General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793



COUNSEL FOR INTERVENING APPELLEE,
THE EAST OHIO GAS COMPANY
D/B/A DOMINION EAST OHIO

4905.04 Power to regulate public utilities and railroads.

(A) The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate public utilities and railroads, to require all public utilities to furnish their products and render all services exacted by the commission or by law, and to promulgate and enforce all orders relating to the protection, welfare, and safety of railroad employees and the traveling public, including the apportionment between railroads and the state and its political subdivisions of the cost of constructing protective devices at railroad grade crossings.

(B) Subject to sections 4905.041 and 4905.042 of the Revised Code, division (A) of this section includes such power and jurisdiction as is reasonably necessary for the commission to perform pursuant to federal law, including federal regulations, the acts of a state commission as defined in 47 U.S.C. 153.

Effective Date: 06-18-1996; 11-04-2005

4909.13 Additional hearings.

The public utilities commission may cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions, or extensions made by any public utility or railroad subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify, or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those previously made. Such hearings shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same effect, as the original notice, hearing, and findings. Such findings made at supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except insofar as such supplemental findings change or modify the findings made at the original hearing or investigation.

Effective Date: 10-01-1953

4909.27 Investigating rates upon its own motion.

If the public utilities commission believes that any rate or charge may be unreasonable or unjustly discriminatory, and that an investigation relating thereto should be made, it may investigate them upon its own motion. Before such investigation it shall present to the railroad a statement in writing setting forth the rate or charge to be investigated. Thereafter, on ten days' notice to the railroad of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto, as if such investigation had been made upon complaint.

When any schedule is filed with the commission stating a new individual or joint rate or charge, any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carriers, but upon reasonable notice, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation, or practice. Pending such hearing and the decision thereon, the commission upon filing with such schedule and delivering to the carriers affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and postpone the use and operation of such rate, charge, classification, regulation, or practice, for a period of not longer than one hundred twenty days beyond the time when such rate, charge, classification, regulation, or practice would otherwise go into effect. After a full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had become effective. If any such hearing cannot be concluded within such period of suspension, the commission may extend the time of suspension for a further period not exceeding thirty days. At any hearing involving a rate increased or a rate sought to be increased, the burden of proof to show that the increased rate or the proposed increased rate is just and reasonable is upon the common carrier, and the commission shall give to the hearing and decision of such question preference over all other questions pending before it and decide the same as speedily as possible.

A full record shall be kept of the proceedings before the commission on such investigations. All testimony shall be taken by the stenographer appointed by the commission.

Effective Date: 10-01-1953

4909.151 Consideration of costs attributable to service.

In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission may consider the costs attributable to such service. The utility shall file with the commission an allocation of the cost, except cost related to sparsity of population, for services for which a change in rates is proposed when evidence relating thereto is presented which indicates that the rate or rates do not generally reflect the cost of providing these services. As used in this section, "costs" includes [include] operation and maintenance expense, depreciation expense, tax expense, and return on investment as actually incurred by the utility. The costs allocated to each service shall include only those costs used by the public utilities commission to determine total allowable revenues.

Effective Date: 09-01-1976

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
 East Ohio Gas Company d/b/a) Case No. 07-829-GA-AIR
 Dominion East Ohio for Authority to)
 Increase Rates for its Gas Distribution)
 Service.)

In the Matter of the Application of The)
 East Ohio Gas Company d/b/a/) Case No. 07-830-GA-ALT
 Dominion East Ohio for Approval of an)
 Alternative Rate Plan for its Gas)
 Distribution Service.)

In the Matter of the Application of The)
 East Ohio Gas Company d/b/a) Case No. 07-831-GA-AAM
 Dominion East Ohio for Approval to)
 Change Accounting Methods.)

ENTRY

The Commission finds:

- (1) The East Ohio Gas Company d/b/a/ Dominion East Ohio (DEO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code. DEO is, therefore, subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05 and 4905.06, Revised Code.
- (2) The notice of intent to file an application for an increase in gas rates was received on July 20, 2007, pursuant to Section 4909.43(B), Revised Code, and in compliance with Rule 4901-7-01, Ohio Administrative Code (O.A.C.), Appendix A, Chapter I, Sections (A) and (B). (Appendix A to Rule 4901-7-01, O.A.C., may be referred to in this Entry as the Standard Filing Requirements).
- (3) With the filing of its notice of intent to file an application seeking Commission authority to increase its gas rates, DEO moved that its test period begin January 1, 2007, and end December 31, 2007, and that the date certain be March 31, 2007. DEO's proposed test period and date certain were determined to be in compliance with Section 4909.15(C), Revised Code, and were, therefore, approved by Commission Entry dated August 15, 2007.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
 Technician T.M. Date Processed 10/24/2007

- (4) The application seeking Commission authority to increase gas rates, including an alternative rate plan, was received by this Commission on August 30, 2007, and is subject to Section 4909.17 to 4909.19, 4909.42, and 4929.05, Revised Code.
- (5) In its notice of intent to file an application for an increase in rates, DEO requested several waivers from filing various financial and informational data required by the Commission's Standard Filing Requirements. In Findings 5, 6, 7, 8, and 9 of the August 15, 2007 Entry, the Commission granted these waivers.
- (6) Section 4909.18, Revised Code, enumerates the statutory requirements for an application to increase rates. The Commission adopted Rule 4901-7-01, O.A.C., and the Appendix thereto (Standard Filing Requirements) pursuant to Sections 4901.13, 4909.04(C), and 4909.18, Revised Code. These Standard Filing Requirements specify the format for filing all information which the Commission in its discretion, requires pursuant to Section 4909.18(F), Revised Code.
- (7) Rule 4901:1-19-05(C)(3), O.A.C., requires an applicant that is "seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code" to include in its application a description of those commitments to customers that it is willing to make in promoting the state policies set forth in Section 4929.02, Revised Code. DEO states in its application that its rate proposal is not seeking alternative forms of rate setting than that found in Section 4909.15, Revised Code. Thus, it argues, the description of customer commitments is not required in this circumstance. Further, DEO confirms that it remains committed to completing its pilot program to test alternative market-based pricing of commodity sales and filing an application to continue moving toward an exit from the merchant function.

We note that the requirement in Rule 4901:1-19-05(C)(3), O.A.C., is that a covered company include in its application a description of its customer commitments. The Commission finds that, by its description of its commitment to exiting the merchant function, DEO has described its customer commitments and, therefore, is in substantial compliance with Rule 4901:1-19-05(C)(3), O.A.C., to the extent that such rule is applicable to the current application. However, compliance with the rule does not mean that DEO's commitments are necessarily sufficient. Therefore, Staff should,

through its investigation, evaluate the adequacy of DEO's commitments to customers.

- (8) The application of DEO meets the requirements of Section 4909.18, Revised Code, and this Commission's Standard Filing Requirements. As such, the application will be accepted as of its filing date of August 30, 2007.
- (9) DEO's proposed notice for publication, set forth in Schedule S-3 of its application, complies with the requirements of Section 4909.18(E), Revised Code, and should be approved, with the following modification. The Commission directs DEO to insert the below-listed paragraph in each newspaper notice. The Commission is of the opinion that the inclusion of this additional paragraph in the notice of publication will enhance interested parties' ability to access DEO's application and its content. DEO shall begin publication of the newspaper notice, pursuant to Section 4909.19, Revised Code, within thirty days of the date of this Entry and such notice shall not appear in the legal notices section of any newspaper.

Any interested party seeking detailed information with respect to all affected rates, charges, regulations and practices may inspect a copy of the application, including supporting schedules and present and proposed rate sheets, by either of the following methods: by visiting the offices of the Commission at 180 East Broad Street, 13th floor, Columbus, Ohio, 43215-3793; or by visiting the Commission's web site at <http://www.puco.ohio.gov>, selecting DIS, inputting 07-829 in the case lookup box, and selecting the date the application was filed. Additionally, a copy of the application and supporting documents may be viewed at the business office of the company at 1201 East 55th Street, Cleveland, Ohio 44103.

It is, therefore,

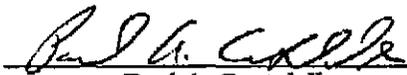
ORDERED, That the application of The East Ohio Gas Company d/b/a/ Dominion East Ohio be accepted for filing as of August 30, 2007. It is, further,

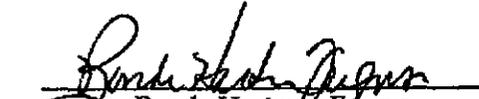
ORDERED, That the proposed newspaper notice submitted by The East Ohio Gas Company d/b/a/ Dominion East Ohio be approved for publication with the modification specified by the Commission as set forth in Finding 9 above. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

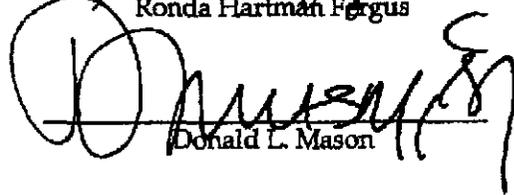
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus

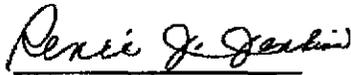

Valerie A. Lemmie


Donald L. Mason

HW:hw

Entered in the Journal

OCT 24 2007



Renee J. Jenkins
Secretary